

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE CLAUDIA WILKEN, JUDGE

TECHNOLOGY PROPERTIES LIMITED LLC

AND MCM PORTFOLIO LLC,

PLAINTIFFS,

VS.

NO. C-14-3640 CW

CANON, INC., ET AL.,

PAGES 1 - 103

DEFENDANTS.

---

TECHNOLOGY PROPERTIES LIMITED,

PLAINTIFF,

VS.

NO. C-14-3541 CW

FALCON NORTHWEST COMPUTER SYSTEMS,

INC.,

DEFENDANT.

---

OAKLAND, CALIFORNIA

JUNE 18, 2015

TRANSCRIPT OF PROCEEDINGS

(CAPTION CONTINUED ON NEXT PAGE)

REPORTED BY: KATHERINE WYATT, CSR, RPR, RMR

OFFICIAL REPORTER, USDC

COMPUTERIZED TRANSCRIPTION BY ECLIPSE

KATHERINE WYATT, PRO TEM REPORTER, CSR, RMR (925) 212-5224

1 TECHNOLOGY PROPERTIES LIMITED,

2 PLAINTIFF,

3 VS.

NO. C-14-3642 CW

4 HITI DIGITAL, INC., ET AL.,

5 DEFENDANTS.

6

7 TECHNOLOGY PROPERTIES LIMITED LLC,

8 PLAINTIFF,

9 VS.

NO. C-14-3643 CW

10 HEWLETT-PACKARD COMPANY,

11 DEFENDANT.

12

13 TECHNOLOGY PROPERTIES LIMITED LLC,

14 PLAINTIFF,

15 VS.

NO. C-14-3644 CW

16 KINGSTON TECHNOLOGY, CO., INC.,

17 DEFENDANT.

18

19 TECHNOLOGY PROPERTIES LIMITED LLC,

20 PLAINTIFF,

21 VS.

NO. C-14-3645 CW

22 NEWEGG INC., ET AL.,

23 DEFENDANTS.

24

25 (CAPTION CONTINUED)

1 TECHNOLOGY PROPERTIES LIMITED LLC,  
2 PLAINTIFF,  
3 VS. NO. C-14-3646 CW  
4 SEIKO EPSON CORPORATION, ET AL,  
5 DEFENDANTS.

6  
7 TECHNOLOGY PROPERTIES LIMITED LLC,  
8 PLAINTIFF,  
9 VS. NO. C-14-3647 CW  
10 SHUTTLE, INC., ET AL.,  
11 DEFENDANTS.

12  
13 TECHNOLOGY PROPERTIES LIMITED LLC,  
14 PLAINTIFF,  
15 VS. NO. C-14-4616 CW  
16 ACTION ELECTRONICS, CO., LTD., ET AL.,  
17 DEFENDANTS.

18  
19  
20 APPEARANCES ON NEXT PAGE.

21  
22  
23  
24  
25

1 APPEARANCES:

2 FOR PLAINTIFF:

3 THE SIMON LAW FIRM, P.C.

4 800 MARKET STREET, SUITE 1700

5 ST. LOUIS, MISSOURI 63101

6 BY: ANTHONY SIMON, ESQUIRE

7 BENJAMIN R. ASKEW, ESQUIRE

8 MICHAEL P. KELLA, ESQUIRE

9 AND

10 BUNSOW, DE MORY, SMITH & ALLISON

11 600 ALERTON STREET, SUITE 101

12 REDWOOD CITY, CALIFORNIA 94063

13 BY: DENISE M. DE MORY, ATTORNEY AT LAW

14  
15 FOR DEFENDANT SEIKO EPSON:

16 (C-14-3646)

17 JONES DAY

18 77 W. WACKER, SUITE 3500

19 CHICAGO, ILLINOIS 60601

20 BY: WILLIAM E. DEVITT, ESQUIRE

21 MATTHEW HERTKO, ESQUIRE.

22 JONES DAY

23 NORTH POINT 901 LAKESIDE AVENUE

24 CLEVELAND, OHIO 44114

25 BY: DAVID M. MAIORANA, ESQUIRE

1 APPEARANCES CONTINUED:

2 JONES DAY

3 51 LOUISIANA AVENUE, N.W.

4 WASHINGTON, D.C. 20001-2113

5 BY: TRACY A. STITT, ATTORNEY AT LAW

6  
7 FOR DEFENDANT SONY:

8 (C-14-4616)

9 KENYON & KENYON

10 1500 K STREET, NW

11 WASHINGTON, DC 20006-1257

12 BY: T. CY WALKER, ESQUIRE

13  
14 AND

15  
16 KENYON & KENYON

17 1801 PAGE MILL ROAD, SUITE 210

18 PALO ALTO, CALIFORNIA 94304-1216

19 BY: MEGAN WHYMAN OLESEK, ATTORNEY AT LAW

20  
21  
22  
23 APPEARANCES CONTINUED ON NEXT PAGE.

1 FURTHER APPEARANCES:

2  
3 FOR DEFENDANT FALCON NORTHWEST:

4 (C-14-3641)

5 NEWEGG

6 (C-14-3641

7 LITIGATION LAW GROUP

8 1801 CLEMENT AVENUE

9 SUITE 101

10 ALAMEDA, CALIFORNIA 94501

11 BY: GORDON M. FAUTH, JR., ESQUIRE

12  
13 FOR DEFENDANT HEWLETT-PACKARD:

14 GOODWIN PROCTER, LLP

15 901 NEW YORK AVENUE, NW

16 WASHINGTON, D.C. 20001

17 BY: MARCIA H. SUNDEEN, ATTORNEY AT LAW

1 JUNE 18, 2015

2:00 O'CLOCK P.M.

3 P R O C E E D I N G S

4 **THE CLERK:** WE ARE CALLING C-14-3640, TECHNOLOGY  
5 PROPERTIES LIMITED, LLC VERSUS CANON, INC., ET AL.

6 COUNSEL, PLEASE COME TO THE PODIUM, AND STATE YOUR  
7 APPEARANCES.

8 **MR. SIMON:** TONY SIMON, SIMON LAW FIRM, ON BEHALF OF  
9 THE PLAINTIFFS.

10 SHOULD I HAVE EVERYONE COME UP OR SHOULD I --

11 **THE COURT:** NO.

12 **MR. SIMON:** NO?

13 **THE COURT:** JUST SAY ALL THEIR NAMES.

14 **MR. SIMON:** OKAY. BENJAMIN ASKEW FROM THE SIMON LAW  
15 FIRM.

16 AND WE ALSO HAVE MICHAEL KELLA FROM THE SIMON LAW FIRM.

17 DENISE DE MORY FROM THE BUNSOW DE MORY LAW FIRM.

18 **THE CLERK:** AND FROM CANON?

19 **MR. MAIORANA:** GOOD AFTERNOON, YOUR HONOR. DAVID  
20 MAIORANA FROM JONES DAY ON BEHALF OF CANON, INC. AND CANON USA,  
21 INC.

22 I AM JOINED BY TRACY STITT, MY PARTNER.

23 **THE CLERK:** CALLING CIVIL CASE 14-3646, TECHNOLOGY  
24 PROPERTIES LIMITED, LLC VERSUS SEIKO EPSON CORPORATION, ET AL.

25 **THE COURT:** WE HAVE THE SAME PLAINTIFFS FOR EVERYBODY,

1 I PRESUME.

2 **MR. SIMON:** YES, YOUR HONOR.

3 **MR. DEVITT:** BILL DEVITT, JONES DAY, REPRESENTING SEIKO  
4 EPSON AND EPSON AMERICA. WITH ME IS MY COLLEAGUE MATT HERTKO,  
5 JONES DAY.

6 **THE CLERK:** CALLING CIVIL CASE 14-3645, TECHNOLOGY  
7 PROPERTIES LIMITED, LLC VERSUS NEWEGG, INC., ET AL.

8 **MR. FAUTH:** GOOD AFTERNOON, YOUR HONOR. GORDON FAUTH  
9 REPRESENTING NEWEGG, INC. AND ROSEWILL, INC.

10 **THE CLERK:** AND NOW CALLING CIVIL CASE 14-3643,  
11 TECHNOLOGY PROPERTIES LIMITED, LLC VERSUS HEWLETT-PACKARD  
12 COMPANY.

13 **MS. SUNDEEN:** GOOD AFTERNOON, YOUR HONOR. MARCIA  
14 SUNDEEN ON BEHALF OF HEWLETT-PACKARD. WITH ME ARE CY WALKER AND  
15 MEGAN OLESEK.

16 **THE COURT:** ALL RIGHT. WELL, WITH RESPECT TO THE  
17 MOTION FOR JUDGMENT ON THE PLEADINGS, I AM INCLINED TO DENY THAT  
18 MOTION. I THINK THE LANGUAGE ABOUT THE COURT OF COMPETENT  
19 JURISDICTION DOESN'T COVER THE ITC AS CONGRESS HAS INDICATED THAT  
20 THE ITC WASN'T INTENDED TO BE DISPOSITIVE OF SUCH THINGS, SO  
21 UNLESS SOMEBODY HAS SOME STARTLING NEW INSIGHTS MY INCLINATION  
22 WOULD BE TO DENY THAT ONE.

23 WITH RESPECT TO THE CLAIM CONSTRUCTION, I THINK MAYBE THE  
24 BEST THING WOULD BE FOR ME TO GO THROUGH THE DISPUTED TERMS AND  
25 TELL YOU WHAT I THINK ABOUT SOME OF THEM OR WHAT MY QUESTIONS ARE



1 ABOUT SOME OF THEM.

2 AND THEN, I DON'T KNOW IF DEFENDANTS HAVE CONSOLIDATED THEIR  
3 ARGUER INTO ONE PERSON OR IF EVERYONE HAS SOMETHING THEY WANT TO  
4 SAY BUT --

5 **MR. DEVITT:** YOUR HONOR, WE HAVE THEM BY TERMS, SO IF  
6 YOU HAVE A QUESTION WITH A PARTICULAR TERM WE HAVE A  
7 REPRESENTATIVE BASED ON THAT.

8 **THE COURT:** OKAY. AND THEN, WE HAVE THE CASE  
9 MANAGEMENT ISSUES, WHICH WE HAVE TO TALK ABOUT, AS WELL. PLEASE  
10 DON'T LET ME FORGET THAT.

11 TO START WITH I THINK WE NEED TO BE CLEAR THAT WHAT WE HAVE  
12 HERE IS CLAIM CONSTRUCTION AND NOT AN OMNIBUS MOTION ON THE  
13 VALIDITY OF THE PATENT OR THE DEFINITENESS OF THE CLAIMS OR THE  
14 ENABLEMENT OR NOT OR ANY OF THOSE OTHER THINGS.

15 A NUMBER OF THOSE THINGS ARE REFERRED TO BUT THOSE -- ALL  
16 I'M DOING NOW IS CONSTRUING CLAIMS.

17 **MR. SIMON:** AGREED.

18 **THE COURT:** I MEAN, I CAN'T -- I CAN'T FIND THE PATENT  
19 INVALID BASED ON --

20 **MR. SIMON:** WE AGREE.

21 **THE COURT:** MAYBE WHAT I WOULD DO WOULD LEAD LATER TO  
22 SOME SUCH FINDING, BUT NONE OF THAT IS TEE'D UP AT THE MOMENT, I  
23 DON'T THINK.

24 **MR. DEVITT:** CAN'T CROSS THAT, YOUR HONOR.

25 **THE COURT:** OKAY.

1           **MR. DEVITT:** WITH RESPECT TO THE 112-6 INDEFINITENESS  
2 ISSUE, WE BELIEVE YOU --

3           **THE COURT:** WELL, I CAN SAY WHAT IS A  
4 MEANS-PLUS-FUNCTION CLAIM.

5           **MR. DEVITT:** CORRECT.

6           **THE COURT:** I CAN SAY WHAT THE FUNCTION IS AND I CAN  
7 SAY WHAT THE STRUCTURE IS.

8           **MR. DEVITT:** AND OUR VIEW IS IF THERE IS AN ADEQUATE  
9 STRUCTURE YOU COULD SAY IT'S INDEFINITE AT THIS TIME.

10          **THE COURT:** I DON'T THINK SO. WHAT WOULD GIVE ME THAT  
11 AUTHORITY? YOU DIDN'T MAKE A MOTION TO THAT EFFECT.

12          **MR. DEVITT:** WE DIDN'T MOVE FOR IT, BUT THE CASE LAW IS  
13 THAT ON CLAIM CONSTRUCTION YOU CAN HAVE A FINDING OF  
14 INDEFINITENESS IF YOU FIND AS A MATTER OF LAW THAT THERE IS AN  
15 ADEQUATE STRUCTURE DISCLOSED.

16          **THE COURT:** DO YOU AGREE WITH THAT?

17          **MR. SIMON:** YOUR HONOR, WE DO AGREE THAT IF YOU WERE TO  
18 FIND THERE IS NOT ADEQUATE STRUCTURE, THEN WE WOULD PROBABLY JUST  
19 AGREE THAT THE CLAIM COULD BE FOUND INDEFINITE. BUT WE DO AGREE  
20 THEY HAVEN'T BROUGHT A MOTION FOR SUMMARY JUDGMENT.

21          **THE COURT:** YES. I MEAN, THE PROBLEM WITH DECIDING  
22 WHETHER THE STRUCTURE IS ADEQUATE IS THAT THAT'S A QUESTION OF  
23 FACT THAT I'M NOT SURE I HAVE TEE'D UP.

24               IN OTHER WORDS, JUST TO CUT THE SUSPENSE, I DO THINK THAT  
25 ALL OF THE ONES THAT USE THE WORD "MEANS" ARE MEANS-PLUS-FUNCTION

1 CLAIMS. I THINK THE FUNCTIONS ARE PRETTY CLEAR, AND I THINK THE  
2 STRUCTURE OF CONTROLLER IS INADEQUATE, IS NOT ADEQUATE.  
3 THEREFORE, WE NEED TO GO TO THE PATENT SPECIFICATION AND SEE IF  
4 WE CAN FIND SOME STRUCTURE IN THERE.

5 AND WE FIND WORDS. WE FIND CHARTS. WE FIND THINGS, BUT  
6 WHETHER THOSE ARE SUFFICIENT, I DON'T KNOW. I MEAN, YOU THINK I  
7 WOULD EVALUATE THE CREDIBILITY OF THE EXPERTS AND DECIDE WHETHER  
8 THOSE CHARTS, THE FIGURES FOUR AND FIVE, FOR EXAMPLE, AND THE  
9 DESCRIPTION OF THE LOWER VOLTAGE AND ALL THAT, I WOULD JUST  
10 DECIDE BASED ON WHAT I HAVE BEFORE ME WHETHER THAT WAS SUFFICIENT  
11 TO DO THE FUNCTION, PERFORM THE FUNCTION?

12 **MR. DEVITT:** OBVIOUSLY, YOUR HONOR, WE WOULD LIKE YOU  
13 TO DO THAT, BUT IF YOU NEED FURTHER BRIEFING ON THAT POINT WE ARE  
14 CERTAINLY PREPARED TO DO SO. IF YOU THINK IT WOULD BE HELPFUL TO  
15 HAVE EXPERTS ON IT, WE ARE HAPPY TO DO SO, AS WELL. BUT WE DO  
16 THINK THAT COULD BE SOMETHING THAT COULD BE DONE.

17 **THE COURT:** WELL, HAVE YOU DONE IT ALREADY?

18 **MR. DEVITT:** WE HAVE SUBMITTED EXPERT DECLARATIONS THAT  
19 SUPPORT OUR BRIEFS. AND WE HAVE TWO -- ON THAT POINT, YOUR  
20 HONOR, YES.

21 **THE COURT:** OKAY.

22 **MR. DEVITT:** SO THERE IS EXPERT DECLARATIONS WHERE  
23 THEIR EXPERT SAYS THERE IS -- WELL, THERE'S DIFFERENT THINGS. I  
24 WON'T CHARACTERIZE IT, BUT OUR EXPERT SAYS IT'S NOT ADEQUATE.

25 **THE COURT:** OKAY. SO STARTING WITH "TO MAP," WHAT I

1 THINK ABOUT THAT IS I THINK GENERALLY THAT DEFENDANTS'  
2 DESCRIPTION OF WHAT THIS PATENT WOULD HAVE TO CLAIM IN ORDER TO  
3 BE VALID AND IN ORDER TO BE NOT -- TO BE INVENTIVE OVER PRIOR ART  
4 AND SO ON, WOULD BE SOMETHING LIKE WHAT YOU ARE SAYING. WOULD BE  
5 THAT YOU CAN'T JUST HAVE A DIFFERENT CONTACT POINT FOR EVERY  
6 ADAPTER CARD. YOU HAVE TO HAVE SOME DEGREE OF FLEXIBILITY,  
7 MULTIPLEXING OR SOMETHING TO BE INVENTIVE, TO BE ANY KIND OF  
8 ADVANCE OVER THE PRIOR ART.

9 I THINK THAT'S GENERALLY TRUE. BUT TO CRAM ALL OF THAT  
10 CONTENT INTO THE WORD "MAP" I THINK IS WRONG. THE WORD "MAP"  
11 JUST MEANS TAKING A GROUP OF THINGS ON THE ONE SIDE AND ASSIGNING  
12 THEM TO A GROUP OF THINGS ON THE OTHER SIDE. IT DOESN'T TALK  
13 ABOUT WHETHER IT HAS TO BE CHANGED, WHETHER IT'S DYNAMIC, WHETHER  
14 IT VARIES OR ANYTHING ELSE. IT'S JUST A SIMPLE MAPPING,  
15 ASSIGNING FUNCTION.

16 SO I CAN SAY "MAP" MEANS ASSIGNING. I CAN THINK IN MY MIND  
17 THAT THE PATENT MEANS MORE THAN THAT, BUT THE WORD "MAP" DOESN'T  
18 MEAN MORE THAN THAT. SO THAT'S WHERE I'M SAYING I CAN CONSTRUE  
19 THE WORD "MAP" BUT THAT ISN'T GOING TO GET YOU EVERYWHERE YOU  
20 WANT TO GO WITH IT.

21 I DO HAVE AN ISSUE WITH "TO LOGICALLY ASSIGN," BECAUSE I  
22 DON'T KNOW WHAT THAT MEANS, AND I DON'T THINK THE JURY IS GOING  
23 TO KNOW WHAT THAT MEANS.

24 TO ME, TO LOGICALLY ASSIGN MEANS TO ASSIGN IN A WAY THAT IS  
25 RATIONAL AND LOGICAL AND NOT IN A WAY THAT IS IRRATIONAL AND

1 ILLOGICAL. IF YOU ARE TRYING TO MEAN SOMETHING ELSE, WHICH I  
2 KNOW THAT YOU ARE, YOU WOULD NEED TO SAY THAT. TO ASSIGN IN  
3 VIRTUAL SENSE OR AN ELECTRONIC SENSE, NOT IN A PHYSICAL SENSE.  
4 OR I DON'T REALLY KNOW WHAT YOU WOULD SAY. IF I HAVE TO DO IT  
5 MYSELF I WOULD JUST SAY "TO ASSIGN," AND LEAVE OUT THE WORD  
6 "LOGICALLY" UNLESS I WAS REALLY GOING TO EXPLAIN WHAT THE WORD  
7 "LOGICALLY" MEANT, WHICH I COULDN'T DO WITHOUT FURTHER HELP.

8 SO THAT'S THAT.

9 **MR. SIMON:** YOUR HONOR, CAN I APPROACH?

10 **THE COURT:** PARDON ME?

11 **MR. SIMON:** MAY I APPROACH?

12 **THE COURT:** YOU MAY APPROACH, BUT I AM GOING TO GO  
13 THROUGH ALL OF THESE BEFORE I HEAR FROM YOU.

14 **MR. SIMON:** OKAY. THAT'S WHAT I WAS GOING TO ASK YOU.  
15 WAIT?

16 **THE COURT:** YES.

17 "MEANS FOR MAPPING," AS I SAY, I THINK IS A  
18 MEANS-PLUS-FUNCTION CLAIM AND THE FUNCTION IS MAPPING. THAT IS  
19 THE FUNCTION IS ASSIGNING INCOMING CONTACT POINTS TO ADAPTER  
20 CONTACT POINTS, OR WHATEVER YOU WANT TO SAY. BUT I DON'T THINK  
21 THAT THE WORD "CONTROLLER" IS ENOUGH.

22 NOW, I DON'T CARE WHETHER "CONTROLLER" MEANS COMPUTER OR IT  
23 MEANS MICROPROCESSOR OR IT JUST MEANS AN INTEGRATED CIRCUIT WITH  
24 ON/OFF SWITCHES. WHATEVER IT MEANS, IT DOESN'T TELL ME HOW TO DO  
25 THIS BY ITSELF. IT'S SORT OF LIKE SAYING:

1 "NOW I AM GOING TO FLY, AND I AM GOING TO FLY USING A  
2 CONTROLLER.

3 "WELL, HOW IS THE CONTROLLER GOING TO FLY?

4 "WE DON'T KNOW."

5 IT'S TO ME "CONTROLLER," THE WORD "CONTROLLER" IS JUST NOT  
6 ENOUGH TO MAKE THIS THING WORK. WHERE YOU GO IN THE  
7 SPECIFICATION TO FIND OUT WHAT THE CONTROLLER IS GOING TO DO, I  
8 DON'T KNOW. YOU PROBABLY WILL WANT TO TELL ME.

9 I DON'T THINK -- SO IT NEEDS AN ALGORITHM, I SUPPOSE.  
10 WHETHER IT'S A COMPUTER OR AN IC IT NEEDS SOMETHING. MAYBE IT'S  
11 NOT AN ALGORITHM. MAYBE IT'S, I DON'T KNOW, SOMETHING ELSE. BUT  
12 IT NEEDS SOMETHING TO EXPLAIN HOW THE CONTROLLER IS GOING TO DO  
13 ALL THE WORK THAT YOU ARE PUTTING ON IT.

14 "MEANS FOR IDENTIFYING THE TYPE OF MEMORY CARD INSERTED  
15 INTO THE PORT." AGAIN, THAT'S A MEANS-PLUS-FUNCTION CLAIM.  
16 THE FUNCTION IS SORT OF SELF-EVIDENT. THE STRUCTURE IS IT JUST  
17 CONTROLLER? IS IT ENOUGH? NEEDING TO LOOK AT THE SPECIFICATION.  
18 IF WE LOOK AT THE SPECIFICATION WE FIND TWO CANDIDATES. ONE IS  
19 "CARD DETECT LINES" AND THE OTHER IS "MULTIPLEX LINES."

20 PLAINTIFF SAYS THAT NEITHER OF THOSE IS NECESSARY, BUT THE  
21 PROBLEM WITH THAT POSITION IS THAT SOMETHING IS NECESSARY. AND  
22 IF IT'S NOT ONE OF THOSE TWO THINGS, THEN IT HAS TO BE SOMETHING  
23 ELSE THAT'S IN THE SPECIFICATION, AND I DON'T KNOW WHAT THAT  
24 WOULD BE.

25 SO FAILING TO FIND ANYTHING ELSE, I WOULD SAY IT'S "CARD

1 DETECT LINES" OR "MULTIPLEX LINES." AND IF YOU CAN TELL ME IS  
2 THERE'S ANYTHING ELSE IN THERE.

3 I HAVE A LITTLE PROBLEM WITH PLAINTIFF'S -- WHAT WAS THE  
4 DISCUSSION OF THE '638 PATENT IN THIS CONTEXT. I GUESS THE  
5 QUESTION ABOUT THE PASSIVE ADAPTER AND HOW THAT FITS IN. MAYBE  
6 IT'S RELEVANT, BUT I DIDN'T UNDERSTAND THE BACK AND FORTH ON THAT  
7 TOO WELL.

8 CONTACT PINS EMBEDDED WITHIN THE MOLDED PLASTIC, I THINK  
9 THAT THAT DOES NEED CONSTRUCTION. AND I THINK THAT THE  
10 CONSTRUCTION WOULD WELL BE CONTACT PINS ARE EMBEDDED IN MOLDED  
11 PLASTIC. I DON'T THINK WE CAN GO ON TO SAY THAT CONTACT PINS DO  
12 NOT CORRESPOND TO FLOATING CONTACT PINS BECAUSE THAT BEGS THE  
13 QUESTION OF WHAT IS THE FLOATING CONTACT PIN, WHICH I DON'T KNOW  
14 THE ANSWER TO, NOR WILL THE JURY.

15 THE ONLY PROBLEM WITH USING "EMBEDDED" I SUPPOSE IS ONE  
16 WOULD HAVE TO SAY THAT IT CAN'T BE FULLY EMBEDDED, BECAUSE THEN  
17 IT WOULDN'T MAKE AN ELECTRICAL CONNECTION, RIGHT, IF IT WERE  
18 FULLY COVERED BY PLASTIC?

19 SO IT HAS TO BE ONLY PARTLY EMBEDDED. HOW EMBEDDED DOES IT  
20 HAVE TO BE? ARE WE GOING TO BE MEASURING THE MICRO NANO  
21 MILLILITERS OF HOW MUCH IS IN THE PLASTIC? I DON'T KNOW. MAYBE  
22 THERE HAS TO BE SOMETHING SAID ABOUT THAT.

23 OR MAYBE YOU ALL COULD EXPLAIN TO ME WHAT A FLOATING CONTACT  
24 PIN IS. AND MAYBE IF THAT'S CLEAR, MAYBE THAT WOULD BE A WAY TO  
25 DIFFERENTIATE THINGS. THEY ARE EITHER FLOATING OR THEY ARE

1 EMBEDDED SOME NANO MILLILITER'S WORTH.

2 INTERCONNECTION MEANS. PLAINTIFF SAYS "CONDUCTIVE ELEMENTS  
3 THAT ELECTRICALLY CONNECT."

4 THAT'S FINE AS FAR AS IT GOES, BUT YOU NEED TO ADD TO THAT  
5 "CONNECT X WITH Y" SUCH THAT THE INTERCONNECTION MEANS IS NEITHER  
6 X NOR Y. SOMETHING CAN'T CONNECT TWO OTHER THINGS UNLESS IT'S  
7 DIFFERENT FROM BOTH OF THEM, IT SEEMS TO ME.

8 DEFENDANTS SAY IT'S DIFFERENT THAN THE CONTACT PINS, BUT  
9 IT'S ALSO DIFFERENT FROM EVERYTHING ELSE THAT IS BEING CONNECTED.  
10 SO DEFENDANTS' IS A LITTLE CONFUSING IN THAT IT ONLY SAYS ONE  
11 THING THAT IT ISN'T. AND IT ISN'T -- THERE'S MORE THAN ONE  
12 THING THAT IT ISN'T.

13 BUT GENERALLY I AGREE WITH DEFENDANTS THAT IT CAN'T BE -- A  
14 CONNECTOR CAN'T BE THE THING -- ATTEMPTING TO SAY THAT'S THE  
15 THING THAT'S CONNECTING.

16 MEDIA, MEMORY MEDIA CARD, I DO THINK THIS NEEDS  
17 CONSTRUCTION. AND I'M NOT SURE WHAT IT MEANS. THAT'S WHY IT  
18 NEEDS CONSTRUCTION. WHAT IS MEDIA? I GUESS MEDIA IS THE THING  
19 THAT IS ON THE CARD. I GUESS MEDIA COULD ALSO BE THE STORAGE  
20 MEDIUM LIKE A HARD DRIVE OR A USB DRIVE OR A CD OR A, YOU KNOW,  
21 MAGNETIC TAPE, WHATEVER.

22 IT COULD BE THAT. I DON'T THINK THAT. I THINK WHAT THEY  
23 ARE TRYING TO SAY IS THAT IT'S THE MEDIA, THE CONTENTS THEMSELF  
24 THAT IS ON THE CARD THAT YOU ARE TRYING TO READ, WHICH WOULD BE  
25 ARCHETYPALLY PHOTOGRAPHS, BUT IT COULD BE ANYTHING. MEDIA COULD



1 BE PHOTOGRAPHS. IT COULD BE A VIDEO. IT COULD BE A RINGTONE.  
2 IT COULD BE MUSIC. IT COULD BE WORDS. IT COULD BE NUMBERS. IT  
3 COULD BE -- AND I KNOW YOU DON'T WANT IT TO BE A SIM CARD, BUT I  
4 DON'T SEE HOW YOU CAN HAVE IT NOT BE A SIM CARD BECAUSE WHERE DO  
5 YOU DRAW THE LINE BETWEEN WHAT'S MEDIA CONTENTS AND WHAT ISN'T  
6 MEDIA CONTENTS? EVERYTHING IS MEDIA, REALLY. ALL CONTENTS IS  
7 MEDIA WHETHER IT'S IN THE FORM OF NUMBERS AND LETTERS OR VISUAL  
8 IMAGES OR WHATEVER. IT'S MEDIA.

9 SO IN ORDER TO DEFINE "MEMORY MEDIA CARD," WE HAVE TO SAY  
10 WHAT MEDIA WE ARE TALKING ABOUT AND HOW WE ARE DISTINGUISHING  
11 THAT FROM EVERYTHING ELSE.

12 AND WE HAVE "TYPE OF MEMORY MEDIA CARD." AND THAT, TOO,  
13 DOES NEED TO BE DISTINGUISHED OR CONSTRUED BECAUSE I GATHER THAT  
14 SORT OF THE CRUX OF THIS CASE WHEN WE GET AROUND TO INFRINGEMENT  
15 IS GOING TO BE WHETHER AN SD AND A -- WHAT ARE THEY -- MMS OR  
16 MMC/SD, ARE THOSE ONE TYPE OR ARE THOSE TWO TYPES?

17 IF THEY ARE ONLY ONE TYPE, THEN MAYBE THIS ISN'T AN ADAPTER  
18 AT ALL. IT'S JUST SINGLE ONE-TRICK PONY. IF IT'S TWO TYPES,  
19 THEN MAYBE IT IS AN ADAPTER. SO WHAT IS A TYPE? HOW DIFFERENT  
20 DOES SOMETHING HAVE TO BE FROM SOMETHING ELSE TO BE A DIFFERENT  
21 TYPE? WHAT DEFINES "TYPE"?

22 I CERTAINLY DON'T KNOW THE ANSWER TO THAT, BUT I THINK THAT  
23 THE JURY IS GOING TO NEED TO KNOW, IN OTHER WORDS, TO ANSWER THE  
24 QUESTION OF WHETHER AN MMS AND SD ARE TWO TYPES OR ONE TYPE.

25 SO THOSE ARE MY ISSUES THAT ARE SORT OF ALL OVER THE MAP, SO

1 I DON'T KNOW HOW YOU WANT TO ADDRESS IT. I GUESS WE CAN HAVE  
2 PLAINTIFFS GO FIRST, AND THEN WHOEVER'S OX IS BEING GORED FROM  
3 THE DEFENDANTS' SIDE CAN ADDRESS IT.

4 **MR. SIMON:** THAT'S FINE, YOUR HONOR.

5 **THE COURT:** OKAY.

6 **MR. SIMON:** WE ACTUALLY AGREED ON AN ORDER AND WE  
7 THOUGHT WE WOULD TAKE THE "TO MAP" FIRST AND DIRECT OUR  
8 ARGUMENTS. WE HAVE ANSWERS TO ALL YOUR QUESTIONS.

9 **THE COURT:** WELL, THAT'S ENCOURAGING.

10 **MR. SIMON:** WITH YOUR PERMISSION I WOULD LIKE TO USE  
11 THE PODIUM WITH THE ELMO JUST SO I CAN PLACE THESE ON THERE, YOUR  
12 HONOR.

13 **THE COURT:** OKAY. YOU CAN DO THAT, BUT IT MAY BE  
14 EASIER FOR ME IF YOU TELL ME -- IF IT'S A FIGURE, TELL ME WHERE  
15 IT IS, BECAUSE I'VE LOOKED AT ALL THIS STUFF. AND THEN, IT WOULD  
16 LOOK MORE FAMILIAR TO ME IF I FOUND IT IN MY OWN PAPERS.

17 **MR. SIMON:** OKAY. YOUR HONOR, EVEN BETTER THAN THAT  
18 WHEN WE COMPARE EXHIBITS AND WE ARE PULLING THINGS OUT OF THE  
19 PATENTS AND WE WANT TO COMPARE A FIGURE, SAY, WITH THE  
20 SPECIFICATION, WE HAVE PREPARED SLIDES TO GUIDE YOU THROUGH.

21 **THE COURT:** WELL, THIS IS THE PART I DON'T LIKE,  
22 BECAUSE I'M USED TO WHAT I HAVE.

23 **MR. SIMON:** NO PROBLEM.

24 **THE COURT:** AND I WANT TO BE ABLE TO FIND IT IF I'VE  
25 ALREADY READ IT AND NOT HAVE TO START COMPARING NEW STUFF THAT

1 YOU ARE GIVING ME SO I --

2 **MR. SIMON:** UNDERSTOOD. WE ACTUALLY CITE TO THE ACTUAL  
3 RECORD ON THE SLIDES.

4 **THE COURT:** OKAY.

5 **MR. SIMON:** I CAN PULL THAT OUT AS I GO THROUGH.

6 **THE COURT:** OKAY.

7 **MR. SIMON:** I CAN PLACE THINGS ON THE ELMO.

8 **THE COURT:** ALL RIGHT.

9 **MR. SIMON:** SO, YOUR HONOR, THE FIRST THING I WANTED TO  
10 GET TO WAS THE WORD "LOGICALLY ASSIGNED" BECAUSE YOU HAD  
11 ADDRESSED LOGICALLY. I THINK YOU AGREE WITH THE PARTIES THAT  
12 THAT MEANS ASSIGNING. AND I'M ASSUMING FROM YOUR COMMENTS THAT  
13 THE ADDITIONAL VERBIAGE THE DEFENDANTS WANTED THAT SAYS:

14 "THE MERE USE OF ADDITIONAL SIGNAL LINES IN SOME  
15 CIRCUMSTANCES BUT NOT OTHERS, BASED UPON FIXED ASSIGNMENTS,  
16 DOES NOT CONSTITUTE MAPPING." WE WILL NOT AGREE WITH THAT  
17 ALSO, SO WE DON'T HAVE TO ADDRESS THAT. OR WOULD YOU LIKE US TO  
18 ADDRESS THAT?

19 **THE COURT:** WELL, THAT IS -- I THOUGHT WHAT THEY WANTED  
20 TO SAY WAS TO VARY THE ASSIGNMENT.

21 **MR. SIMON:** CORRECT, YOUR HONOR. THEY WANT TO VARY THE  
22 ASSIGNMENT ON -- FOR ALL THREE OF THE PATENTS. AND THEN, THEY  
23 WANTED "TO MAP" JUST FOR THE '443 PATENT, THEY WANTED SOME  
24 DISCLAIMER LANGUAGE.

25 **THE COURT:** ALL RIGHT.

1 WHAT'S NEXT?

2 **MR. SIMON:** THAT'S FINE. I CAN ADDRESS THAT, AS WELL.

3 **THE COURT:** ALL RIGHT.

4 **MR. SIMON:** THERE IS ONE PRELIMINARY MATTER I WOULD  
5 LIKE TO ADDRESS, AND THE CLAIM WE ARE TALKING ABOUT HERE -- I  
6 JUST HAVE THE EXEMPLAR CLAIM HERE. AND THIS IS EXHIBIT -- THIS  
7 IS THE '424 PATENT. I'LL JUST PUT THIS UP HERE VERY QUICKLY SO  
8 THE WORDS ARE IN CONTEXT, YOUR HONOR.

9 IT'S EXHIBIT B AT COLUMN 8, LINES 53 TO 60. THIS IS THE  
10 LANGUAGE OF THE CLAIM:

11 "A CONTROLLER CHIP TO MAP."

12 AND THE DEFENDANTS, BY THE WAY, AGREE THAT THIS IS  
13 SUFFICIENT STRUCTURE. THERE IS NO FIGHT ABOUT THAT ON THIS  
14 PARTICULAR PATENT. THEY ARE SAYING THIS IS NOT  
15 MEANS-PLUS-FUNCTION.

16 **THE COURT:** SO WHAT --

17 **MR. SIMON:** WE AGREE WITH THAT, AS WELL. SO WITH  
18 RESPECT TO THE COMMENTS ABOUT A CONTROLLER'S MEANS-PLUS-FUNCTION,  
19 THAT WOULDN'T BE APPLICABLE HERE. I JUST WANT TO MAKE THAT  
20 CLEAR. FOR THE '424 PATENT, THAT'S JUST NOT SOMETHING THEY ARE  
21 ARGUING.

22 **THE COURT:** WELL, I SEE THE WORD "MEANS" HERE ON --

23 **MR. SIMON:** RIGHT.

24 **THE COURT:** -- CLAIM 25.

25 **MR. SIMON:** OKAY.

1           **THE COURT:** "APPARATUS COMPRISING."

2           **MR. SIMON:** AND WHAT I'VE DONE HERE, I'VE SUMMARIZED  
3 THE DIFFERENCES BETWEEN THE PARTIES' POSITIONS. SO THE FIRST  
4 ISSUE IS WE SAY "LOGICALLY." THEY SAY "VARYING."

5           I THINK YOU ADDRESSED "VARY." WE AGREE WITH YOU THAT "VARY"  
6 WOULD NOT BE APPROPRIATE BECAUSE WE AGREE WITH YOU, YOUR HONOR,  
7 THAT SOMETHING HAS TO CHANGE WHEN YOU PUT THE MEMORY CARD IN.  
8 WHAT HAS TO HAPPEN IS THE ASSIGNMENTS ARE CREATED WHEN YOU PUT  
9 THE MEMORY CARD IN.

10           THIS IS THE ADDITIONAL LANGUAGE THAT THE DEFENDANTS WANT:

11           "THE MERE USE OF ADDITIONAL SIGNAL LINES IN SOME  
12 CIRCUMSTANCES BUT NOT OTHERS, BASED UPON FIXED ASSIGNMENTS  
13 DOES NOT CONSTITUTE MAPPING."

14           AND I JUST NOTE THAT THEY ONLY PROPOSE THIS FOR THIS PATENT,  
15 THE '443 AND NOT FOR THE '424 OR THE '447.

16           I'M SORRY. THE '847.

17           YOUR HONOR, THERE'S ONE POINT OF DISPUTE WITH THE LOGICAL,  
18 LOGICALLY. THIS IS ONE ISSUE THAT I THINK WE WOULD ASK YOU  
19 CONSTRUE. WE PUT THIS IN A FOOTNOTE IN OUR REPLY BRIEF. AND I  
20 BRING THIS UP AS A PRELIMINARY MATTER SIMPLY BECAUSE -- AND THIS  
21 IS WHY WE PUT "LOGICAL" IN OUR PROPOSED CONSTRUCTION.

22           THE DEFENDANTS AT THE ITC IN THE MARKMAN PHASE TRIED TO SAY  
23 IT WAS PHYSICAL CHANGING, LIKE A RAILROAD SWITCH, FLIPPING FROM  
24 ONE TRACK TO ANOTHER. AND THE ADMINISTRATIVE LAW JUDGE SAID:

25           "RESPONDENTS APPEAR TO CONCEDE THAT THE MAPPING IS A

1 LOGICAL FUNCTION AND DOES NOT REQUIRE SOME PHYSICAL  
2 CONNECTION BE CHANGED."

3 **THE COURT:** DEFINE "LOGICAL."

4 **MR. SIMON:** "LOGICAL" IS NOT -- IT'S NOT IN THE LOGIC  
5 SENSE BUT IN THE COMPUTER SENSE. AND WITH RESPECT TO ALL THESE  
6 TERMS --

7 **THE COURT:** TELL THE JURY THAT.

8 **MR. SIMON:** YES. IT WOULD BE WHAT ONE WHO IS SKILLED  
9 IN THE ART WOULD SAY IS, FOR EXAMPLE -- AND I'VE GOT SOME SLIDES  
10 ON THAT -- ASSIGN A CONNECTION. BASICALLY SAYING IN THE  
11 COMPUTER, THE CONTROLLER IS GOING TO SAY:

12 "I'M GOING TO TAKE PATH A, AND I'M GOING TO LINK THAT  
13 LOGICALLY," WHICH IS HOW YOU SAY IT IN A COMPUTER, "WITH THE  
14 DATA THAT IS COMING FROM THE SD CARD YOU PUT IN."  
15 SO, FOR EXAMPLE --

16 **THE COURT:** USING A WORD TO DEFINE A WORD, WHICH ISN'T  
17 A GOOD WAY TO DEFINE THINGS.

18 **MR. SIMON:** OKAY.

19 **THE COURT:** LOGICALLY --

20 **MR. SIMON:** WOULD BE TO CREATE, AS YOU SAID, A VIRTUAL  
21 CONNECTION, FOR EXAMPLE, BETWEEN -- THAT SD CARD HAS FOUR DATA  
22 LINES, AND THERE'S FOUR SIGNAL LINES THAT CONNECT THE CONTROLLER.  
23 SO I'M GOING TO CREATE A VIRTUAL CONNECTION SO THE CONTROLLER  
24 KNOWS WHEN IT GETS DATA FROM AN SD CARD IT CONNECTS THE FOUR DATA  
25 LINES AS OPPOSED TO, FOR EXAMPLE, AN MMC CARD, THE CONTROLLER

1 KNOWS I'M ONLY GOING TO GET DATA FROM ONE DATA LINE.

2 AND SO THAT PARTICULAR PATENT, INSTEAD OF USING FOUR LINES

3 IT WILL USE ONE LINE FOR MMC CARDS AND FOUR LINES FOR SD CARDS.

4 AND WHAT THE CONTROLLER WILL DO IS IT WILL CREATE A CONNECTION, A

5 VIRTUAL CONNECTION IN ITS MIND TO SAY:

6 "WELL, WHAT LINES SHOULD I LOOK FOR FOR DATA FROM THE

7 CARD THAT IS IN? IF IT'S SD I'M GOING TO WATCH FOUR LINES.

8 IF IT'S MMC I'M GOING TO WATCH ONE LINE."

9 SO IT WOULD BE A VIRTUAL LINKING IS WHAT I WOULD SAY FOR  
10 LOGICAL CONNECTION.

11 **THE COURT:** BUT IT WOULD HAVE TO BE A PHYSICAL LINKING  
12 BECAUSE ELECTRICITY IS A PHYSICAL ACTIVITY. YOU CAN'T JUST THINK  
13 ABOUT IT. YOU HAVE TO ACTUALLY HAVE A CONNECTION.

14 **MR. SIMON:** WELL, THAT'S THE POINT. HERE'S THE BENEFIT  
15 OF THIS WHOLE INVENTION, YOUR HONOR. I AM GOING TO PUT ON THE  
16 SCREEN HERE FIGURE 5.

17 THIS IS FIGURE 5 FROM THE PATENTS, ALL THREE PATENTS. AND  
18 WHAT YOU GET HERE IS YOU HAVE ON THE LEFT A NUMBER OF SIGNAL  
19 LINES. AND THAT'S THE PATH THAT THEY ARE GOING TO TAKE.

20 ALONG THE TOP YOU HAVE THE TYPES OF MEMORY CARDS AT ISSUE.  
21 WHAT THIS TABLE SHOWS YOU IS IF YOU PUT IN A MMC/SD CARD, THESE  
22 ARE THE ASSIGNMENTS THAT ARE GOING TO HAPPEN TO THESE LINES IN  
23 THE FIRST COLUMN.

24 AND THE REASON I BRING THAT UP IS THESE PHYSICAL CONNECTIONS  
25 ARE ALREADY THERE. THE WHOLE POINT OF THIS INVENTION IS TO SAY

1 WE DON'T WANT TO HAVE TO RUN 41 OR 42 OF THESE CONNECTOR LINES.  
2 WE ARE ONLY GOING TO RUN 18 IN THIS INSTANCE, 18. AND WE CAN  
3 SHARE THOSE 18 LINES BY A CONTROLLER DECIDING:

4 "WHAT TYPE OF CARD DO I HAVE?"

5 AND THEN USING THIS CHART TO SAY:

6 "OKAY. IF I'VE GOT A SMARTMEDIA CARD, LINE ONE IS  
7 GOING TO BE GROUND. AND THE DATA IS GOING TO COME ON D0,  
8 D1, ALL THE WAY DOWN TO D5. MY POWER IS GOING TO GO ON  
9 LINE 18."

10 AND THEN, YOU CAN USE THOSE SAME 18 PHYSICAL, ELECTRICAL  
11 PATHS THAT ARE ALREADY THERE IF YOU WANT TO PLUG IN AN RSMCM  
12 CARD, BUT YOU CAN ONLY USE A SUBSET OF THOSE.

13 SO --

14 **THE COURT:** OKAY. BUT ULTIMATELY THERE WILL BE A  
15 PHYSICAL CONNECTION BETWEEN THE CARD AND THE CONTACT PIN.

16 **MR. SIMON:** BUT THAT PHYSICAL CONNECTION WAS ALREADY  
17 CREATED, AND IT WAS IN THE PRIOR ART.

18 **THE COURT:** WELL, THAT'S FINE, BUT IT'S STILL THERE.

19 **MR. SIMON:** ABSOLUTELY. WE ARE NOT SAYING IT'S NOT.

20 **THE COURT:** SO WHY WOULD YOU SAY "LOGICALLY"? YOU  
21 WOULD JUST SAY IT'S ASSIGNED.

22 **MR. SIMON:** BECAUSE WHEN WE GOT TO THE ITC TRIAL,  
23 THAT'S WHAT THEIR EXPERT SAID? EVEN THOUGH THEY CONCEDED IT  
24 WASN'T PHYSICAL, THEY TRIED TO SAY IT HAD TO BE PHYSICAL. AND  
25 THAT CAUSED A BIG FIGHT.



1           AND HERE, RIGHT NOW IN THEIR PAPERS, THEY DON'T SAY WHETHER  
2           THEY THINK THE CHANGING THE ASSIGNMENT HAS TO BE PHYSICAL OR IF  
3           IT CAN BE LOGICAL.

4           OUR POINT IS THE PHYSICAL PATHS ALREADY EXIST. EVERYBODY  
5           AGREES WITH THAT. WE THINK WHAT THEY ARE TRYING TO SAY, AS THEY  
6           DID IN THE ITC WAS YOU WOULD PHYSICALLY HAVE TO CHANGE THAT PATH  
7           LIKE A SWITCH ON A RAILROAD PATH MECHANICALLY AS OPPOSED TO JUST  
8           LOGICALLY SAYING:

9                        "ALL RIGHT. I AM GOING TO USE SIX OF THESE 18 PATHS OR  
10           FIVE OF THESE 18 PATHS OR ALL 18 OF THESE 18 PATHS DEPENDING  
11           ON THE TYPE OF MEMORY CARD."

12           THAT IS A DISPUTE IN THIS CASE. AND I CAN GUARANTEE WE ARE  
13           GOING TO BE FIGHTING ABOUT WHETHER IT'S A PHYSICAL SWITCHING OR  
14           ASSIGNING OR IF IT'S A LOGICAL ASSIGNING. AND ALL THE DEFENDANTS  
15           KNOW WHAT "LOGICAL" MEANS. THEY KNEW WHAT IT MEANT IN THE ITC.  
16           I AGREE WE WILL HAVE TO EXPLAIN IT TO A JURY.

17                       **THE COURT:** WELL, I GUESS, WHO IS SPEAKING FOR THIS  
18           CLAIM? WOULD IT BE EASIER TO COME ON UP, THEN, AND TELL ME  
19           WHETHER YOU ARE ABLE TO SAY --

20                       **MR. DEVITT:** SO, YES, YOUR HONOR. AND I'M BILL DEVITT.  
21           SO WE --

22                       **THE COURT:** CAN YOU TELL ME WHETHER YOU ARE GOING TO BE  
23           SAYING THAT MAPPING IS PHYSICAL VERSUS LOGICAL, NEITHER OR BOTH?

24                       **MR. DEVITT:** YES, IT IS PHYSICAL. YOU HAVE TO HAVE A  
25           PHYSICAL ASSIGNMENT. AND CONTRARY TO WHAT COUNSEL HAS SAID, WE

1 NEVER CONCEDED ANYTHING. IN FACT, I DON'T KNOW WHERE THAT CAME  
2 FROM. I WENT THROUGH THE TRANSCRIPT OF THE MARKMAN HEARING IN  
3 THE OTHER CASE, AND THERE'S NO SUCH CONCESSION. SO I WISH WE  
4 COULD JUST KIND OF PUT THAT ASIDE.

5 YOUR HONOR IS RIGHT. IN ORDER TO GET FROM THE CONTACT PINS  
6 TO THE CONTROLLER, ELECTRONS NEED TO GO ALONG A PATH. YOU NEED A  
7 PHYSICAL PATH. YOU ARE ABSOLUTELY, ONE HUNDRED PERCENT CORRECT.

8 SO THE ISSUE IS HOW YOU GET FROM THE CONTACT PINS TO THE  
9 CONTROLLER. AND THERE'S DIFFERENT SPOTS. I THINK WHAT WE CAN  
10 AGREE ON IS THE INTERMEDIATE SPOTS. AND JUST TO BE CLEAR ON THAT  
11 I WOULD JUST LIKE TO GO THROUGH IT.

12 **THE COURT:** WELL, YOU COULD DECIDE WHICH PATHS TO USE  
13 IN A, SHALL WE SAY, LOGICAL FASHION. AND YOU COULD USE ONE OF A  
14 NUMBER OF PATHS, I SUPPOSE.

15 **MR. DEVITT:** WHEN YOU SAY "LOGICAL FASHION," YOU ARE  
16 AGAIN USING KIND OF, QUOTE, "PHILOSOPHICAL LOGIC," SO I THINK I  
17 WOULD LIKE TO AVOID USING THAT TERM BECAUSE IT DOESN'T -- IT'S  
18 NOT HELPFUL IN THIS CONTEXT, YOUR HONOR.

19 SO WHAT THE ISSUE IS, YOUR HONOR, IS WE HAVE CONTACT PINS  
20 THAT NEED TO GET CONNECTED TO INTERCONNECT PINS OR INTERCONNECT  
21 MEANS.

22 **THE COURT:** WHAT IS THE THING ON THE CARD ITSELF? IS  
23 THAT A CONTACT PIN, AS WELL? THE CARDS HAVE LITTLE --

24 **MR. DEVITT:** THE CARDS HAVE --

25 **THE COURT:** -- LITTLE PIECES --

1           **MR. DEVITT:**   --WE --

2           **THE COURT:**   -- OF COPPER ON THEM, AND YOU STICK THEM IN  
3 SOMETHING.

4           **MR. DEVITT:**   RIGHT.

5           **THE COURT:**   AND THEY MESH UP WITH OTHER LITTLE PIECES  
6 OF COPPER.   SO WHAT DO YOU CALL THE LITTLE PIECES OF COPPER ON  
7 THE CARD ITSELF?

8           **MR. DEVITT:**   JUST CONTACT POINTS.   CONTACTS.

9           **THE COURT:**   CONTACT POINTS ARE MESHING WITH OTHER  
10 CONTACT POINTS.

11          **MR. DEVITT:**   OR PATH.   AND THEY CONTACT -- I THINK WE  
12 HAVE ONE.

13          **THE COURT:**   MAYBE THEY ARE COPPER.

14          **MR. DEVITT:**   I CAN SHOW YOU IF YOUR HONOR WOULD --

15          **THE COURT:**   NO, I SEE THEM.   I JUST DIDN'T KNOW WHAT  
16 YOU CALL THEM.   YOU CALL THEM "CONTACT PINS" ALSO?

17          **MR. DEVITT:**   WE CALL THOSE CONTACTS ON THE CARDS.   BUT  
18 WHEN I'M REFERRING TO A CONTACT PIN, CAN YOU SEE --

19          **THE COURT:**   WELL, I KNOW THERE'S CONTACT PINS IN THE  
20 DEVICE.

21          **MR. DEVITT:**   IN THE CONNECTOR ITSELF.   AND THAT'S WHAT  
22 THESE ARE.   THESE ARE WHERE THE CARD WOULD GO IN.   WHEN YOU ARE  
23 TALKING ABOUT YOU TAKE YOUR CAMERA CARD OUT WITH THE LITTLE PATHS  
24 ON THEM.   YOU PRESS THEM INTO A CONNECTOR.   THIS IS A CONNECTOR  
25 THAT HAS OPENED UP.   AND THESE FULL LINES ARE THE CONTACT PINS.

1 AND THESE ARE DIFFERENT SETS FOR DIFFERENT TYPES OF --

2 **THE COURT:** BUT WHAT DO YOU CALL THE LITTLE THINGS ON  
3 THE CARDS?

4 **MR. DEVITT:** PATHS OR CONTACTS. JUST THOSE TERMS.

5 **THE COURT:** OKAY.

6 **MR. DEVITT:** SO YOU GO FROM THE MEMORY CARD THAT YOU  
7 SET. AND I HAVE THE LITTLE GOLD CONTACTS ON THEM. THEY GET  
8 PUSHED INTO A SLOT AND THEY MAKE CONTACT WITH THE CONTACT PINS.  
9 FROM THE CONTACT PINS THERE NEEDS TO BE A CONNECT TO  
10 INTERCONNECTION MEANS OR AN INTERCONNECTION PIN OR SIGNAL LINE,  
11 WHICH IS NEXT IN THE PATH. AND THEN IT GOES TO THE CONTROLLER.  
12 WE ALL AGREE ON THAT.

13 THAT'S IN THEIR BRIEF RIGHT IN PAGE TWO. CONTACT PINS,  
14 INTERCONNECTION PINS, SIGNAL LINES, CONTROLLER. WE ALL AGREE  
15 THOSE ARE THE INTERMEDIATE POINTS. BUT CONNECTIONS NEED TO BE  
16 MADE PHYSICALLY BETWEEN THOSE POINTS.

17 **THE COURT:** OKAY.

18 **MR. DEVITT:** OKAY? THIS --

19 **THE COURT:** BUT IS THERE SOME OTHER THING BESIDES  
20 PHYSICALLY THAT NEEDS TO HAPPEN THAT THEY ARE CALLING "LOGICALLY"  
21 AND --

22 **MR. DEVITT:** THE CONCERN THAT I HAVE ABOUT SAYING THE  
23 TERM "PHYSICALLY" IS THEN YOU WOULD SAY IS IF I FLASH A LIGHT AT  
24 YOU IT CAN SIGNAL IT. OR RADIO WAVES, IS THAT PHYSICAL? SOMEHOW  
25 ELECTRONS NEED TO GET FROM POINT A TO POINT B. THE PHYSICAL WAY

1 THEY DESCRIBE IT IN THE PATENT IS WIRES.

2 THE ISSUE WE HAVE, YOUR HONOR, IS WITH RESPECT TO THE  
3 CONTACT PINS HOW MANY SETS NEED TO BE MAPPED? RIGHT? I KNOW THE  
4 MAPPING HAS TO BE BETWEEN CONTACT PINS AND INTERCONNECT PINS OR  
5 CONTACT PINS AND SIGNAL LINES. IT'S THE SAME IDEA.

6 OUR POINT IS WHAT THEY HAVE SAID IN THE PROSECUTION HISTORY  
7 WITH RESPECT TO HUNG-JU, THEY SAID OUR MAPPING, WHAT WE MAP IS  
8 FROM A SET OF CONTACT PINS, RIGHT? AND THAT NEEDS TO BE ABLE TO  
9 SAY:

10 "OKAY. WHAT CARD AM I?" ONE SET OF CONTACT PINS, NOT  
11 MULTIPLE SETS. THAT'S WHAT'S IN THE PRIOR ART. PRIOR ART HAD  
12 MULTIPLE SETS OF CONTACT PINS. I MEAN, CONTACT PINS FOR MEMORY  
13 STICK. IT WOULD HAVE ITS OWN CONTACT PINS.

14 ALL THE PRIOR ART INCLUDING THE SD AND MMC, THEY SHARE A SET  
15 OF CONTACT PINS. WHAT OUR POINT IS IS WHAT THEY SAID IN THE  
16 PROSECUTION HISTORY IS THEY SAID:

17 "NO. NO. WE'RE NOT MULTIPLE SETS OF CONTACT PINS.

18 WE ARE A SINGLE SET, AND WE MAP. WE HAVE THIS MAGIC SET OF  
19 CONTACT PINS THAT I CAN PUT A CARD ON. I IDENTIFY WHAT TYPE  
20 OF CARD ON BECAUSE I KNOW HOW TO MAKE THOSE PHYSICAL  
21 CONNECTIONS TO THE SIGNAL LINES WITH THE INTERCONNECT PINS."

22 THAT'S WHAT -- THAT'S WHERE THOSE ASSIGNMENTS ARE DONE.

23 THAT'S WHAT OUR BRIEF IS TALKING ABOUT.

24 **THE COURT:** OKAY.

25 **MR. DEVITT:** I SEEM TO HAVE CONFUSED YOUR HONOR. I WANT

1 TO MAKE SURE, AM I NOT BEING CLEAR?

2 **THE COURT:** I'M NOT SURE WHAT THE DIFFERENCE IS BETWEEN  
3 WHAT YOU ARE SAYING.

4 **MR. SIMON:** I HAVE GOT AN EXHIBIT I THINK WILL HELP.

5 **THE COURT:** IF YOU JUST BOTH STAY UP THERE INSTEAD OF  
6 GOING BACK AND FORTH.

7 **MR. DEVITT:** OKAY.

8 **MR. SIMON:** OKAY. YOUR HONOR, WHAT I -- SORRY.

9 **THE COURT:** JUST TELL ME, WHY DON'T WE JUST SAY "TO  
10 ASSIGN"?

11 **MR. SIMON:** WE COULD SAY "TO ASSIGN," BUT THIS IS THE  
12 POINT I WANT TO MAKE.

13 I AM SORRY. MR. DEVITT, CAN WE SWITCH, PLEASE?

14 IF YOU LOOK, THIS IS A PICTURE OF EXACTLY WHAT IS GOING ON.  
15 SO WE HAVE THE CARD HERE. IT'S GOT THE PATHS ON IT. WE HAVE THE  
16 CONTACT PIN TO TOUCH THE CARD.

17 WE HAVE THE INTERCONNECTION PINS HERE (INDICATING). WE HAVE  
18 GOT THE SIGNAL LINES IN-BETWEEN AND WE HAVE GOT A CONTROLLER.

19 WHAT WE ARE SAYING IS THOSE PATHS ALREADY EXIST. THEY ARE  
20 ALREADY LAID DOWN. THERE ARE EIGHT OF THEM IN THIS INSTANCE.  
21 WHEN YOU PUT AN SD CARD IN ON THE TOP, FOUR OF THE LINES ARE USED  
22 FOR DATA. WHEN YOU PUT AN MMC CARD IN ON THE BOTTOM -- WHEN YOU  
23 PUT AN MMC CARD IN ON THE BOTTOM -- I APOLOGIZE.

24 WHEN YOU PUT AN MMC CARD IN ON THE BOTTOM, ONE LINE IS USED  
25 FOR DATA. WE THINK WHAT THEY ARE ARGUING IS THERE HAS TO BE LIKE

1 A LITTLE RAILROAD SWITCH HERE THAT MOVES. WHEN YOU PUT THE CARD  
2 IN IT CONNECTS DIFFERENT LINES. AND WE ARE SAYING:

3 "NO. NO. NO. YOU HAVE GOT IT ALL WRONG. THE  
4 PHYSICAL CONNECTIONS ARE ALREADY THERE. THE CONTROLLER IS  
5 JUST SAYING, FOR EXAMPLE, IN THIS INSTANCE: 'I AM SHARING  
6 THE SETS OF CONTACT PINS. WHICH LINES SHOULD I SEND DATA  
7 ON?'"

8 AND THEN, LOGICALLY, INSIDE THE CONTROLLER IT SAYS:

9 "OH, I'M GOING TO LOOK AT FOUR LINES IF IT'S AN SD  
10 CARD. I'M GOING TO LOOK AT ONE LINE IF IT'S AN MMC."

11 THEY ARE ARGUING YOU HAVE TO PHYSICALLY THROW A LITTLE METAL  
12 SWITCH INSIDE THERE. AND WE ARE SAYING:

13 "NO. NO. NO. IT'S ALREADY THERE."

14 **THE COURT:** I'M NOT HEARING THEM ARGUING THAT.

15 **MR. SIMON:** THAT'S WHAT THEY ARE ARGUING, SO --

16 **THE COURT:** WELL, I DIDN'T HEAR THAT.

17 **MR. SIMON:** THAT'S WHAT THEY ARGUED --

18 **THE COURT:** SO IF THEY SAY THAT SOMETIME, THEN YOU CAN  
19 OPPOSE THEM.

20 **MR. SIMON:** OKAY.

21 **THE COURT:** BUT AT THE MOMENT YOU ARE TRYING TO TELL ME  
22 THAT WE DO THIS ASSIGNMENT ONLY LOGICALLY AND WE DON'T HAVE A  
23 PHYSICAL ASSIGNMENT. AND YOU SAY:

24 "OH, IT'S ALREADY THERE."

25 WELL, I DON'T CARE WHETHER IT'S ALREADY THERE OR ISN'T

1 ALREADY THERE, IT'S GOT TO BE THERE OR YOU ARE NOT GOING TO HAVE  
2 AN ELECTRICAL --

3 **MR. SIMON:** I APOLOGIZE, YOUR HONOR. I'M NOT SAYING  
4 THERE IS NOT A PHYSICAL PATH. WHAT I AM SAYING IS THERE'S ONE  
5 SET -- THERE'S A SET OF EIGHT PATHS IN THIS CASE. FOR SD/MMC  
6 THERE'S EIGHT LINES. WHAT THE CONTROLLER DOES IS PICK SUBSETS OF  
7 THOSE PATHS TO SEND DATA ON. THAT'S WHAT I'M SAYING.

8 **THE COURT:** BUT I'M ONLY WORRIED ABOUT WHAT "TO MAP"  
9 MEANS.

10 **MR. SIMON:** RIGHT.

11 **THE COURT:** "TO MAP" MEANS YOU ASSIGN ONE THING TO  
12 ANOTHER THING. AND YOU DO THAT PHYSICALLY, BECAUSE IF YOU DON'T  
13 DO IT PHYSICALLY, YOU ARE NOT GOING TO GET ANY ELECTRICITY FOR  
14 IT.

15 **MR. SIMON:** NO.

16 **THE COURT:** I DON'T SEE WHY WE WOULD SAY TO LOGICALLY  
17 ASSIGN. WE JUST SAY "TO ASSIGN." AND LET THE CHIPS FALL WHERE  
18 THEY MAY.

19 **MR. SIMON:** BECAUSE --

20 **MR. DEVITT:** BECAUSE THAT'S WHAT WE WANT, YOUR HONOR.

21 **MR. SIMON:** NO, THAT'S WHAT THE CLAIM DOES SAY, YOUR  
22 HONOR. I CAN PUT IT BACK UP. THE CLAIM ACTUALLY SAYS:

23 "TO MAP THESE THINGS THAT ALREADY EXIST, THESE PHYSICAL  
24 THINGS THAT ALREADY EXIST."

25 SO WHEN IT SAYS "TO MAP" IT'S NOT TO CREATE THE PHYSICAL



1 CONNECTION. THE CLAIM READS THE PHYSICAL CONNECTION IS ALREADY  
2 THERE, AND YOU ARE SELECTING --

3 **THE COURT:** YOU CHOOSE WHICH ONE YOU ARE GOING TO USE.

4 **MR. SIMON:** THAT'S IT. THAT'S RIGHT. JUST CHOOSING  
5 PREEXISTING PHYSICAL PATHS HERE, PICKING WHICH ONE YOU ARE GOING  
6 TO USE, JUST LIKE WE HAVE HERE. AND THAT'S WHY IF YOU -- THE ONE  
7 I PUT UP THERE, ACTUALLY, THE OTHER ONE IS IN THIS INSTANCE AT  
8 THE BOTTOM IF THE CONTROLLER THINKS THIS IS AN SD CARD, IT'S  
9 GOING TO BE LOOKING AT FOUR LINES, FOUR PHYSICAL PATHS FOR DATA  
10 AND IT'S NOT GOING TO GET THE RIGHT DATA. IT WON'T WORK.

11 **THE COURT:** OKAY.

12 **MR. SIMON:** SO THAT'S WHY IT HAS TO MAP.

13 **THE COURT:** OKAY. SO I GUESS THE ONLY THING THAT YOU  
14 HAVE A PROBLEM WITH IS YOU WANT TO HAVE YOUR ENTIRE CASE SUBSUMED  
15 IN THE DEFINITION OF THE WORD "MAP" AND I DON'T THINK THAT THAT'S  
16 RIGHT. SO --

17 **MR. DEVITT:** THAT'S NOT --

18 **THE COURT:** -- ARE YOU GOING TO TALK ME OUT OF THAT  
19 SOMEHOW?

20 **MR. DEVITT:** IS THIS ON? CAN YOU HEAR ME OKAY?

21 **THE COURT:** I CAN HEAR YOU.

22 **MR. DEVITT:** SO THAT'S -- THIS CASE ISN'T ENTIRELY  
23 WRAPPED UP IN MAP. THEIR CASE ISN'T ENTIRELY WRAPPED UP IN MAP.  
24 THEY STILL HAVE TO PROVE A LOT OF OTHER LIMITATIONS, YOUR HONOR,  
25 RELATED TO MEANS FOR IDENTIFYING CONTACT PINS, THINGS LIKE THAT,

1 SO -- BUT WE DO THINK THAT NO ONE MAPS. AND THAT'S WHAT THE ITC,  
2 THE ALJ ESSEX, JUDGE ESSEX FOUND.

3 **THE COURT:** THAT WHAT?

4 **MR. DEVITT:** NONE OF THESE PRODUCTS MAP. AT THE ITC --

5 **THE COURT:** NONE OF YOUR PRODUCTS.

6 **MR. DEVITT:** NONE OF ANY OF OUR CLIENT PRODUCTS MAP

7 BECAUSE -- AND THE COMMISSION FOUND AND THE JUDGE FOUND THAT.

8 AND IF I CAN EXPLAIN WHY I WOULD LIKE TO DO SO. I KNOW WE ARE

9 GETTING INTO -- BUT IT'S IMPORTANT TO UNDERSTAND THE CONCEPT OF  
10 MAPPING.

11 **THE COURT:** BUT DO I HAVE TO DEFINE IT IN SOME WAY --

12 **MR. DEVITT:** NO, YOU DO HAVE TO DEFINE IT. IT'S CLAIM  
13 CONSTRUCTION, YOUR HONOR, UNFORTUNATELY.

14 **THE COURT:** RIGHT, BUT I WAS DEFINING IT AS SAYING  
15 "ASSIGN." AND IF YOU WANT TO SAY THERE'S ELSEWHERE IN THE PATENT  
16 THAT REQUIRES IT TO BE A CERTAIN WAY, WHETHER IT'S PRIOR ART THAT  
17 MEANS THAT YOU DON'T INFRINGE, THAT'S ALL FINE. BUT THAT ISN'T  
18 ALL EXPLAINED IN THE DEFINITION OF THE SINGLE WORD "MAP."

19 **MR. DEVITT:** RIGHT. IF YOUR HONOR -- THE CLAIM  
20 REQUIRES YOU TO MAP BASED ON THE TYPE OF CARD INSTALLED. THAT'S  
21 WHAT THEY SAY.

22 **THE COURT:** RIGHT.

23 **MR. DEVITT:** AND SO --

24 **THE COURT:** WELL, NOT THAT'S ANOTHER --

25 **MR. DEVITT:** RIGHT.

1           **THE COURT:** BUT THOSE ARE DIFFERENT WORDS. THOSE  
2 AREN'T THE WORD "MAP."

3           **MR. DEVITT:** SO OUR POINT IS IS THAT FOR AN SD AND MMC  
4 CARD, WHICH SHARE THE SAME SET OF PINS BECAUSE THE MMC CARDS, AND  
5 THEN THE NEXT GENERATION WAS SD CARDS AND THEY WANTED TO BE ABLE  
6 TO USE THE SAME ONES IN THE SAME CAMERAS. SO THEY USED THE SAME  
7 FOOTPRINT. USED A COUPLE MORE PINS. AND AS TECHNOLOGY IMPROVED  
8 A LITTLE BIT WE WENT FROM ONE BIT SERIAL TRANSFER TO FOUR BIT  
9 PARALLEL TRANSFER. BUT IT LOOKS LIKE THE SAME CARD, SO THEY FIT  
10 IN THE SAME SLOT.

11           BUT NO MAPPING IS REQUIRED FOR THOSE CARDS BECAUSE THEY ARE  
12 ALREADY CONNECTED. AND THEY ALREADY KNOW HOW TO -- WHAT SIGNALS  
13 GO ON WHAT LINES. SO THIS WHOLE IDEA OF LOGICALLY ASSIGNING IS  
14 TRYING TO CREATE A OR COME UP WITH AN INFRINGEMENT ARGUMENT FOR  
15 SD AND MMC. AND THAT'S WHY WE TALKED A LOT ABOUT WHAT HAPPENS IN  
16 THE PRIOR ART WHAT THEY TALKED ABOUT AND WHAT HAPPENS IN HUNG-JU.

17           AND IN FACT WHY THEY GOT REJECTED IN HUNG-JU BECAUSE THEY  
18 ORIGINALLY NEVER HAD THE IDEA OF MAPPING. IF YOU RECALL THAT --  
19 IF YOU TURN TO THE DEFENDANTS' BRIEF THERE, WOULD YOU?

20           **THE COURT:** YES.

21           **MR. DEVITT:** IF YOU TURN TO PAGE EIGHT OF DEFENDANTS'  
22 BRIEF, WHICH SAYS "DOCKET NUMBER 82." DO YOU HAVE IT YOUR  
23 HONOR?

24           **THE COURT:** YES.

25           **MR. DEVITT:** AND YOU SEE THERE IS IN THE SECTION THREE,

1 ABOUT LINE 23 THROUGH 25 WE HAVE A QUOTE FROM THE AMENDMENT THAT  
2 THEY HAD IN THE PROSECUTION OF THE '443 PATENT. AND IT USED TO  
3 BE A CONTROLLER CHIP OPERABLE TO DIFFERENTIATE PIN CONFIGURATIONS  
4 BASED ON AN INSERTED MEDIA CARD. AND THE PATENT OFFICE REJECT  
5 THAT BASED ON A PRIOR ART THAT'S CALLED "HUNG-JU," WHICH THE  
6 ARGUMENT'S ON THE NEXT PAGE WE'LL GET TO.

7 AND THEY WERE TALKING ABOUT BEING ABLE TO DIFFERENTIATE  
8 DIFFERENT TYPES OF CARDS. THE IDEA OF MAPPING AND WHAT THIS  
9 THING THAT WE ARE SPENDING SO MUCH TIME ON THIS MORNING, OR THIS  
10 AFTERNOON, YOUR HONOR, CAME INTO CREATION ONLY THROUGH SOME  
11 PATENT LAWYER COMING UP WITH IT HERE.

12 AND THE REASON THAT WE'RE TALKING THAT FIXED ASSIGNMENT AND  
13 SD AND MMC CARDS DON'T MAP IS BECAUSE THOSE SHARE A SET -- A  
14 COMMON SET OF CONTACT PINS THAT ALREADY PREWIRED, SO YOU DON'T  
15 NEED TO MAP.

16 BUT WHAT THEY SAID IS, AS YOU TURN TO PAGE NINE OF OUR  
17 BRIEF, AND LINES THREE THROUGH NINE, THERE'S A LONG BLOCK QUOTE.

18 THIS IS A PROSECUTION HISTORY WHERE THEY TALK ABOUT THE  
19 HUNG-JU REFERENCE. AND I'D LIKE TO DIRECT YOUR ATTENTION IN  
20 PARTICULAR TO LINES --

21 **THE COURT:** WELL, OKAY. I THINK I HAVE THE PICTURE  
22 HERE.

23 **MR. DEVITT:** OKAY.

24 **THE COURT:** LET'S MOVE ON TO "MEANS FOR MAPPING."

25 **MR. DEVITT:** OKAY.

1           **THE COURT:**   OKAY?

2           **MR. SIMON:**   YOUR HONOR, CAN I MAKE ONE MORE POINT?

3           **THE COURT:**   WHAT I NEED FOR YOU TO TELL ME IS WHAT THE  
4   STRUCTURE IS --

5           **MR. DEVITT:**   YES.

6           **THE COURT:**   -- ASSUMING WE NEED A STRUCTURE, WHAT IS IT  
7   GOING TO BE.

8           **MR. SIMON:**   THANK YOU, YOUR HONOR.

9           I APOLOGIZE.

10          **MR. DEVITT:**   YOUR HONOR, WHILE HE'S WAITING, THERE'S  
11   ONE --

12          **MR. SIMON:**   YES, I'VE GOT IT RIGHT HERE.   "MEANS FOR  
13   MAPPING."

14          **MR. DEVITT:**   HE DOESN'T WANT ME TO TALK.

15          **MR. SIMON:**   WELL, I WOULD RATHER FOCUS ON THE MERITS --  
16   THE CLAIM CONSTRUCTION.

17          SO "MEANS FOR MAPPING," WHAT I HEARD YOU SAY, YOUR HONOR, IS  
18   THAT YOU AGREE THAT IT'S A CONTROLLER.   AGREE THAT SECTION 112  
19   PARAGRAPH 6 APPLIES.   THE FIRST POINT I WOULD LIKE TO MAKE IS FOR  
20   ONE OF THE PATENTS THEY AGREE THAT SECTION 112-6 DOESN'T APPLY  
21   AND THEY ARE NOT REQUIRING THAT CONTROLLER TO HAVE AN ALGORITHM  
22   AND THEY ARE NOT SAYING THERE'S NOT SUFFICIENT STRUCTURE  
23   DISCLOSED IN HERE.

24          **THE COURT:**   IS THAT TRUE?

25          **MR. DEVITT:**   THAT'S TRUE.   THAT'S THE '443, YOUR HONOR.

1 IT'S NOT A MEANS-PLUS-FUNCTION CLAIM.

2 **THE COURT:** OKAY.

3 **MR. SIMON:** OKAY. SO FOR THE OTHER TWO PATENTS, "MEANS  
4 FOR MAPPING," BOTH SIDES AGREE IT'S A CONTROLLER. AND I HEARD  
5 YOU SAY AND I WROTE DOWN IN MY NOTES THAT YOU HAVE TO KNOW WHAT  
6 THE CONTROLLER IS GOING TO DO. AND IF YOU GO LOOK AT THE  
7 SPECIFICATION, AND --

8 **THE COURT:** THERE'S A MEANS-PLUS-FUNCTION CLAIM --

9 **MR. SIMON:** WELL --

10 **THE COURT:** -- SO WE NEED A MEANS OR A FUNCTION. AND  
11 IF THE MEANS ISN'T SUFFICIENTLY DESCRIBED WITHIN THE CLAIM  
12 ITSELF, WHICH IT ISN'T, THEN WE NEED TO LOOK AT THE SPECIFICATION  
13 TO FIND OUT WHAT THE STRUCTURE IS. AND YOU ARE LIMITED TO THAT  
14 STRUCTURE. AND THAT'S HOW I SEE IT.

15 BUT YOU NEED TO TELL ME WHERE IN THE SPECIFICATION, COLUMN  
16 AND LINE, WHAT YOU WOULD SAY IS THE STRUCTURE. AND THAT THAT IS  
17 WHAT YOU WILL BE LIMITED TO, THAT AND THE --

18 **MR. SIMON:** YES. AND WHAT I WOULD SAY, YOUR HONOR, IS  
19 THE STRUCTURE IS THE CONTROLLER. WE ALL AGREE ON THAT. WE  
20 DISAGREE THAT YOU HAVE TO GIVE PROGRAMMING FOR OUR CONTROLLER.

21 **THE COURT:** THAT'S ALL I HAVE TO SAY: YOU NEED  
22 SOMETHING.

23 **MR. SIMON:** I --

24 **THE COURT:** YOU TELL ME WHAT YOU NEED THAT THE ARTISAN  
25 IS GOING TO LOOK AT AND SAY:

1 "OH, THIS IS HOW YOU DO IT."

2 **MR. SIMON:** I AGREE. AND YOU NEED SOMETHING. AND WHAT  
3 THE PERSON WOULD LOOK AT IS FIGURES 4 AND 5 OF THE PATENT. AND  
4 SAY:

5 "I'M GOING TO HAVE A CONTROLLER. AND WHAT I'M GOING TO  
6 HAVE MY CONTROLLER DO IS I AM GOING TO MAP, BECAUSE THAT'S  
7 THE FUNCTION, IS TO MAP."

8 AND ALL THAT THE PERSON OF ORDINARY SKILL IN THE ART WOULD  
9 HAVE TO DO -- AND THIS IS SOMEBODY WHO IS EXPERIENCED IN CREATING  
10 CONTROLLERS. AND I'VE REFERENCED THIS TELCORDIA  
11 CASE, YOUR HONOR, THAT WE CITED WHERE THE STRUCTURE AND A  
12 MEANS-PLUS-FUNCTION CLAIM WAS A CONTROLLER.

13 **THE COURT:** SO YOU ARE LOOKING AT FIGURE 4 AND 5. IS  
14 THAT IT?

15 **MR. SIMON:** WELL, I MEAN, FIGURE 4 AND 5 AND COLUMNS  
16 THAT GO WITH IT.

17 **THE COURT:** WHICH ARE?

18 **MR. SIMON:** WHICH ARE WITH RESPECT TO -- WITH RESPECT  
19 TO THE '424 PATENT, IT'S COLUMN 5, LINES 54 THROUGH COLUMN 5,  
20 LINE 63.

21 WITH RESPECT TO THE '847, IT'S COLUMN 5, AT 41 THROUGH 6 AT  
22 49.

23 **THE COURT:** IS THIS ALL WRITTEN DOWN SOMEWHERE IN THE  
24 RECORD OR --

25 **MR. SIMON:** YES. IT'S IN THE BRIEF. IT'S IN THE

1 BRIEF, YOUR HONOR. IT'S IN THE BRIEF.

2 THE POINT I WANT TO MAKE, THOUGH, IS THE TELCORDIA CASE  
3 WHERE IT WAS MEANS -- A MEANS FOR SECTION 112-6. IN THE SPEC THE  
4 CONTROLLER -- THE CONTROLLER WASN'T EVEN IN THE CLAIMS. IT WAS  
5 IN THE SPEC. AND THE FEDERAL CIRCUIT SAID THAT IS SUFFICIENT  
6 STRUCTURE. AND THE FEDERAL CIRCUIT SAID:

7 "THE ABSENCE OF MATERNAL CIRCUITRY IN THE WRITTEN  
8 DESCRIPTION DOES NOT AUTOMATICALLY RENDER THE CLAIM  
9 INDEFINITE."

10 YOU DON'T HAVE TO GIVE THAT. AND IT DID NOT SAY YOU HAVE TO  
11 DISCLOSE AN ALGORITHM. IT DOES NOT HAVE TO DO THAT. SO ALL WE  
12 ARE --

13 **THE COURT:** MAYBE IT DOESN'T DEPENDING ON WHAT THE  
14 INVENTION IS, BUT IN THIS CASE IT DOES NEED TO BECAUSE OTHERWISE  
15 IT'S A --

16 **MR. SIMON:** WELL, AN ACTUALLY THAT WAS THE ARGUMENT IN  
17 TELCORDIA. THEY SAID ALL YOU SHOW -- CISCO SAID THE FIGURE IN  
18 THE PATENT JUST SHOWS A BLACK BOX. NOTHING IN THE FIGURE  
19 DESCRIBES THE DETAILS OF THE CIRCUITRY. AND THE FED CIRCUIT SAID  
20 YOU DON'T HAVE TO AS LONG AS A PERSON OF ORDINARY SKILL WOULD BE  
21 ABLE TO DO IT.

22 AND WE HAVEN'T JUST CITED -- IN OUR BRIEFING, YOUR HONOR, WE  
23 ACTUALLY HAVE A DECLARATION THAT IS UNREBUTTED OF A PERSON OF  
24 ORDINARY SKILL IN THE ART THAT SAYS:

25 "HERE'S HOW I FIGURE OUT HOW TO MAP. AND THIS IS WHAT



1           YOU DO."

2           AS I SAID BEFORE, IT'S REALLY NOT THAT DIFFICULT. YOU HAVE  
3       THESE LINES.

4           **THE COURT:** I JUST UNDERSTOOD FOUR AND FIVE.

5           **MR. SIMON:** YES.

6           **THE COURT:** YOU ARE GOING TO BE STUCK WITH THOSE.

7           **MR. SIMON:** WELL, AND EQUIVALENTS --

8           **THE COURT:** SO --

9           **MR. SIMON:** RIGHT. AND SO, FOR EXAMPLE, WITH SD AND  
10       MMC, RIGHT HERE (INDICATING) YOU WOULD USE SD0 FOR DATA FOR MMC  
11       AND YOU WOULD USE SD0, 1, 2, 3 AND MAP FOUR DATA LINES FOR SD.  
12       AND THAT'S EXACTLY WHAT THE DISPUTE IS IN THIS CASE.

13          **THE COURT:** OKAY.

14          **MR. SIMON:** SO THAT'S EXACTLY WHAT THEY DO.

15          **THE COURT:** NOW WHERE WOULD I FIND THE COLUMN  
16       DESCRIPTION THAT THEY RELY ON?

17          **MR. SIMON:** IN OUR BRIEF, YOUR HONOR, WE HAVE CITED IN  
18       THE BRIEF, IN THE SECTIONS IN THE BRIEF THE COLUMNS. THESE ARE  
19       JUST TAKEN RIGHT OUT OF THE BRIEFS.

20          **THE COURT:** YOU DIDN'T THINK YOU NEEDED TO DO THIS, SO  
21       I'M JUST CURIOUS HOW I'M GOING TO FIND IN THE BRIEFS WHERE YOU  
22       SAY WHAT YOU WOULD NEED TO DO WHEN YOU DIDN'T THINK YOU DID NEED  
23       TO DO IT.

24          **MR. SIMON:** WE DID IT IN AN ABUNDANCE OF CAUTION, YOUR  
25       HONOR.

1           **THE COURT:** WELL, THAT'S GOOD.

2           **MR. SIMON:** WE PUT THE EVIDENCE IN, ANYWAY. WE SAID  
3 ONE OF ORDINARY SKILL IN THE ARE, MR. BUSCAINO. HERE'S HIS  
4 DECLARATION. AND HE PUTS IN HIS DECLARATION:

5           "HERE'S WHAT I LOOK AT TO PROGRAM THE CONTROLLER OR TO  
6 CREATE A CONTROLLER."

7           AND HE CITES THE COLUMNS AND LINE NUMBERS, AND WE PUT THAT  
8 IN OUR BRIEF.

9           **THE COURT:** FOR EACH OF THE INSTANCES.

10          **MR. SIMON:** YES. FOR EACH INSTANCES OF A CONTROLLER.

11          **THE COURT:** OKAY.

12          **MR. SIMON:** YES.

13          **THE COURT:** DO YOU AGREE WITH THAT --

14          **MR. DEVITT:** CAN I RESPOND TO THAT, YOUR HONOR? I  
15 DON'T -- OH, ARE THOSE CITES IN HIS BRIEF? I DON'T HAVE THAT.  
16 HE CAN SHOW IT TO ME.

17          **MR. SIMON:** HERE, YOUR HONOR. IT'S DOCUMENT 282. THIS  
18 IS OUR BRIEF AND IT'S FOOTNOTES 23, 24, 25, 26. THIS IS  
19 SUBSECTION TWO. IT SAYS:

20          "EVEN IF AN ALGORITHM DISCLOSURE WAS REQUIRED, THE  
21 SPECIFICATION DISCLOSES AN ALGORITHM."

22          OKAY. AND WE GO THROUGH A DISCUSSION OF IT.

23          **THE COURT:** OKAY. SO FOOTNOTES 23 THROUGH 26?

24          **MR. SIMON:** YES.

25          **THE COURT:** AND IT CITES TO EACH PATENT, THE COLUMN --

1           **MR. SIMON:** RIGHT.

2           **THE COURT:** SO IT WILL TELL ME THE STRUCTURE THAT WOULD  
3 BE REQUIRING THE CONTROLLER.

4           **MR. SIMON:** YES. YOU WILL SEE A CONTROLLER PROGRAMMED  
5 IN ACCORDANCE WITH FIGURES FOUR AND FIVE AND THE TEXT IN THE  
6 COLUMNS RELATED AND EQUIVALENTS THEREOF.

7           **THE COURT:** OKAY. DO YOU HAVE ANY PROBLEM WITH THAT?

8           WELL, YOU WOULD LIKE ME THEN TO GO BEYOND THAT AND LOOK AT  
9 WHAT THE EXPERTS SAY AND SAY THEY DON'T --

10          **MR. DEVITT:** IF I COULD POINT OUT A COUPLE OF THINGS --

11          **THE COURT:** -- THE DESCRIPTIONS AREN'T ADEQUATE AND  
12 COMPARED TO WHAT THE TWO EXPERTS HAVE TO SAY AND MAKE A DECISION  
13 BASED ON THEIR DECLARATIONS. AND I'LL JUST TAKE ANOTHER LOOK, AS  
14 I -- WELL, MAYBE I WILL. BUT OTHERWISE I'LL JUST SAY THAT WILL BE  
15 FOR FUTURE MOTION PRACTICE OR PERHAPS FOR TRIAL.

16          **MR. DEVITT:** I WOULD LIKE TO RESPOND TO IT BRIEFLY, BUT  
17 THAT'S FINE, YOUR HONOR.

18          **THE COURT:** OKAY.

19          **MR. SIMON:** YOUR HONOR?

20          **THE COURT:** ARE YOU GOING TO BE USING THE ELMO?

21          **MR. DEVITT:** I DO. I WANT TO PUT UP THE FIGURES FROM  
22 THE PATENT. I WANT TO POINT SOMETHING OUT.

23          **THE COURT:** OKAY.

24          **MR. DEVITT:** AS YOU SAID, THEY'LL BE STUCK WITH THE  
25 ALGORITHM BEING FIGURES FOUR AND FIVE, AND I WANT TO HIGHLIGHT

1 SOMETHING, YOUR HONOR. WE ARE TALKING A LOT ABOUT SD AND MMC.  
2 AND I THINK ONE OF THE THINGS IS WHETHER IT'S GOING TO BE ONE  
3 TYPE OF CARD OR TWO TYPES OF CARDS THAT COUNSEL IS GOING TO  
4 ADDRESS.

5 BUT IF YOU LOOK AT FIGURES FOUR AND FIVE AS FAR AS THE  
6 ALGORITHM, THEY ARE TREATED IDENTICAL. THERE'S ONLY ONE COLUMN  
7 WHERE I DON'T SEE SD. AND --

8 **THE COURT:** YOU'RE LOOKING AT FIGURE THREE.

9 **MR. DEVITT:** I'M SORRY. I'M LOOKING AT FIGURE FOUR  
10 RIGHT DOWN HERE. I DON'T HAVE A SPACE. I APOLOGIZE. BUT IF YOU  
11 LOOK AT FIGURE FOUR HE'S SAYING THIS IS THE ALGORITHM HOW TO DO  
12 IT. AND HE'S SAYING:

13 "I DO IT THE EXACT SAME WAY FOR MMC AND SD."

14 SO THEY DON'T DO AN ALGORITHM TO DISTINGUISH THE TWO.

15 SIMILARLY WITH FIGURE FIVE, YOUR HONOR, YOU WILL SEE --

16 **THE COURT:** YOU'RE MAKING A NONINFRINGEMENT ARGUMENT.

17 **MR. DEVITT:** NO, I'M TELLING YOU THAT THERE'S NO  
18 ALGORITHM TO DISTINGUISH THE MAPPING BETWEEN MMC AND SD. THERE'S  
19 NO DISCLOSURE OF AN ALGORITHM TO DISTINGUISH BETWEEN THOSE TWO.

20 **THE COURT:** OKAY. AND WHETHER HE NEEDS THAT OR NOT IS  
21 AN INFRINGEMENT QUESTION.

22 **MR. DEVITT:** CORRECT. BUT I'M SAYING WITH -- NO. I'M  
23 ARGUING WHETHER THERE'S ADEQUATE DISCLOSURE OF AN ALGORITHM TO  
24 DISTINGUISH MMC AND SD.

25 **THE COURT:** ASSUMING THAT I NEED ONE, WHICH I DON'T

1 KNOW IF I DO OR NOT.

2 **MR. DEVITT:** FAIR ENOUGH, YOUR HONOR.

3 ONE OTHER POINT I WANT TO GET BACK TO BECAUSE I DIDN'T GET  
4 TO FINISH WITH RESPECT TO THE ASSIGNING POINT, AND THE PART THAT  
5 IS IMPORTANT, YOUR HONOR --

6 **THE COURT:** WELL, WE REALLY NEED TO GO --

7 **MR. DEVITT:** I KNOW. JUST TWO SECONDS.

8 **THE COURT:** -- BECAUSE IT'S THREE O'CLOCK.

9 **MR. DEVITT:** TWO SECONDS, IF I CAN INDULGE YOU. IS  
10 THAT IN THE PATENT -- AND IF I CAN GRAB IT HERE. THIS IS COLUMN  
11 TWO OF THE PATENT, THE '443 PATENT, THEY TALK ABOUT HOW YOU HAVE  
12 A CONTROLLER THAT BASICALLY DOES HANDSHAKING. AND IN THE PRIOR  
13 ART, EVEN THE ADMITTED PRIOR ART THAT THEY TALK ABOUT THEY HAVE  
14 MULTIPLE SETS OF PINS. THEY CAN PUT A CARD IN AND THAT CARD  
15 WOULD BE IDENTIFIED BY A CONTROLLER. THIS IS RIGHT HERE IN  
16 COLUMN TWO OF THE PATENT. I BELIEVE IT'S LINES 20 THROUGH 23, I  
17 BELIEVE, OR 24.

18 AND WHAT IT IS, YOUR HONOR, IS YOU CAN PUT A CARD IN. IT  
19 HANDSHAKES IT, IDENTIFIED, AND THEN IT TRANSFERS DATA BACK AND  
20 FORTH, EVEN WITH SD AND MMC CARDS.

21 SO THAT WAS ALREADY KNOWN. THAT'S ALREADY IN THE PRIOR ART,  
22 THE ADMITTED PRIOR ART, IN COLUMN TWO. SO I COMMEND YOUR  
23 ATTENTION TO THAT, AS WELL.

24 **MR. SIMON:** YOUR HONOR?

25 **THE COURT:** WE NEED TO MOVE ON TO THE "MEANS FOR

1 IDENTIFYING THE TYPE OF MEMORY CARD INSERTED."

2 AND, AGAIN, ASSUMING THAT THIS IS A MEANS-PLUS-FUNCTION  
3 CLAIM AND THE CONTROLLER ISN'T ENOUGH AND WE NEED TO TURN TO THE  
4 SPECIFICATION TO FIND OUT HOW WE ARE GOING TO IDENTIFY THE TYPE  
5 OF MEMORY CARD. THE TWO CANDIDATES WE HAVE GOT ARE CARD WITH  
6 SET LINES AND A MULTIPLEXER. AND YOU DON'T THINK IT HAS TO BE  
7 EITHER OF THOSE.

8 **MR. SIMON:** WITH YOUR PERMISSION, YOUR HONOR --

9 **THE COURT:** SO I NEED TO HEAR FROM YOU AS TO WHETHER IT  
10 IS AT LEAST SOMETIMES ONE OF THOSE. OR IF YOU DON'T LIKE THEM  
11 AND IF YOU DON'T LIKE THEM, WHAT YOU ARE GOING TO GIVE ME  
12 INSTEAD.

13 **MR. SIMON:** MR. KELLA IS GOING TO ADDRESS THAT, IF IT'S  
14 ALL RIGHT.

15 **THE COURT:** OKAY. ALL RIGHT.

16 **MR. KELLA:** WOULD IT BE OKAY, YOUR HONOR, IF I USE THE  
17 ELMO TO HELP ILLUSTRATE?

18 **THE COURT:** WELL, YOU CAN IF YOU DON'T JUST GET ALL  
19 DISTRACTED AND SHUFFLING PAPERS. IT'S MORE HELPFUL TO ME IF YOU  
20 JUST TELL ME THINGS.

21 **MR. KELLA:** I WILL DO MY BEST, YOUR HONOR. SO ON  
22 "MEANS FOR IDENTIFYING," IF I UNDERSTAND YOUR CONCERN CORRECTLY,  
23 IS IS WHAT DOES -- WHAT IS USED TO PERFORM THE FUNCTION --

24 **THE COURT:** WHAT IS THE STRUCTURE?

25 **MR. KELLA:** -- IN ADDITION TO THE CONTROLLER?

1           **THE COURT:** CORRECT.

2           **MR. KELLA:** AND THE DEFENDANTS, AS YOUR HONOR KNOWS,  
3 ARE ARGUING IT'S NOT JUST THE CONTROLLER. IT'S THE CONTROLLER  
4 AND CARD DETECT LINES. AND WE ARE SAYING THE STRUCTURE IS NOT  
5 LIMITED TO A CONTROLLER AND CARD DETECT LINES.

6           AND THERE'S TWO MAIN REASONS FOR THAT. AND THE FIRST REASON  
7 IS THAT THE LAW SAYS YOU CONSTRUE THE STRUCTURE AS THE STRUCTURE  
8 THAT ACTUALLY PERFORMS THE CLAIMED FUNCTION.

9           **THE COURT:** IF IT'S DESCRIBED IN THE SPECIFICATION.

10          **MR. KELLA:** CORRECT. AND ALL PARTIES -- I APOLOGIZE,  
11 YOUR HONOR. ALL PARTIES AGREE THAT THE CONTROLLER AT LEAST  
12 PARTICIPATES IN IDENTIFYING THE CARD TYPE.

13          AND PLAINTIFF'S POSITION IS THE CONTROLLER ITSELF  
14 IDENTIFIES --

15          **THE COURT:** WELL, THAT IS FINE. BUT THE CLAIMS DON'T  
16 TELL ME HOW IT DOES SO. AND SO IT'S NOT SUFFICIENT. AND SO I'M  
17 GOING TO LOOK IN THE SPECIFICATION TO FIND HOW IT DOES SO.

18          AND YOU TELL ME WHERE IN THE SPECIFICATION SHOULD I LOOK TO  
19 SEE HOW IT DOES THAT.

20          **MR. KELLA:** CORRECT, YOUR HONOR. IF I COULD --

21          **THE COURT:** LIKE COLUMNS AND LINES.

22          **MR. KELLA:** ASSUMING TELCORDIA DOES NOT APPLY, AND YOUR  
23 HONOR FINDS THAT THE SPEC MUST TALK ABOUT HOW TO PERFORM --

24          **THE COURT:** I DO THINK THAT, YES.

25          **MR. KELLA:** VERY GOOD. FOR EXAMPLE, YOUR HONOR, IN THE

1 '424 PATENT, IF WE LOOK AT LINES -- LINE SIX -- COLUMN SIX, LINE  
2 15 TO 17, IT STATES THAT:

3 "THE CONTROLLER CHIP DIFFERENTIATES THE PIN  
4 CONFIGURATION FOR EACH FLASH MEDIA TYPE."

5 AND I THINK ALL PARTIES WOULD AGREE THAT THAT INDICATES THAT  
6 THE CONTROLLER --

7 **THE COURT:** OH, SURE. BUT HOW DOES IT DO IT?

8 **MR. KELLA:** WELL, IT COULD USE A NUMBER.

9 **THE COURT:** TWO OR FIVE?

10 **MR. KELLA:** WELL, I THINK THERE'S A COUPLE OF  
11 ALTERNATIVES.

12 **THE COURT:** WE WOULD NEED SOMETHING TO TELL SOMEONE  
13 SKILLED IN THE ART HOW TO MAKE A CONTROLLER DO THAT. SO WHERE IS  
14 THAT?

15 **MR. KELLA:** ABSOLUTELY. AND ONE POSSIBILITY IS CARD  
16 DETECT LINES.

17 **THE COURT:** RIGHT.

18 **MR. KELLA:** AND WE AGREE CARD DETECT LINES CAN BE USED.

19 **THE COURT:** GOOD.

20 **MR. KELLA:** ONE POSSIBILITY WOULD BE --

21 **THE COURT:** MULTIPLEXING.

22 **MR. KELLA:** WELL, IF I COULD TAKE UP MULTIPLEXING  
23 SEPARATELY, BECAUSE I THINK MULTIPLEXING IS A SEPARATE ISSUE  
24 ASIDE FROM --

25 **THE COURT:** WELL, YOU ARE GOING TO BE LIMITED TO WHAT



1 YOU TELL ME. SO I AGREE YOU CAN USE CARD DETECT LINES.

2 MR. KELLA: I UNDERSTAND.

3 THE COURT: THAT'S ONE. IF YOU WANT ANYTHING MORE,  
4 TELL ME WHAT IT IS.

5 MR. KELLA: OR YOU COULD USE BINARY STATE OF DATA OR  
6 OTHER CARD PINS. AND THAT'S RIGHT IN THE CONTROLLER.

7 THE COURT: BINARY STATE OF DATA MEANS ZEROS AND ONES.  
8 THAT'S NOT ENOUGH TO TELL SOMEBODY HOW TO MAKE A MACHINE.

9 "OH, USE ZEROS AND ONES.

10 "OKAY, GREAT."

11 MR. KELLA: WELL, THAT'S ACTUALLY A VERY SIMPLE  
12 FUNCTION WHEN IT COMES DOWN TO IT THAT ONE OF ORDINARY SKILL IN  
13 THE ART WOULD UNDERSTAND. AND MR. BUSCAINO IN HIS DECLARATION  
14 HAS EXPLAINED --

15 THE COURT: WHAT IS SIMPLE?

16 MR. KELLA: WELL --

17 THE COURT: YOU ARE GOING TO STICK FIVE DIFFERENT CARDS  
18 IN A SLOT AND SOMEHOW THE MACHINE IS GOING TO TELL WHICH ONE YOU  
19 STUCK IN THERE. THAT ISN'T SIMPLE.

20 MR. KELLA: CORRECT.

21 THE COURT: YOU NEED TO KNOW HOW THE MACHINE IS GOING  
22 TO DO THAT.

23 MR. KELLA: AND IF WE COULD LOOK AT FIGURE FIVE OF THE  
24 '424 PATENT, HERE'S AN EXAMPLE. IF WE LOOK AT THE MINI SD CARD,  
25 WE SEE PIN 14 AND -- I'M SORRY. PIN 13. AND WE SEE THAT THAT

1 SERVES AS A CARD DETECT LINE.

2 **THE COURT:** WE'VE AGREED ON CARD DETECT LINE. YOU'VE  
3 GOT THAT.

4 **MR. KELLA:** AS ONE OPTION.

5 **THE COURT:** YES.

6 **MR. KELLA:** CORRECT.

7 **THE COURT:** DO YOU WANT ANYMORE OPTIONS?

8 **MR. KELLA:** MCMD COMMAND SIGNALS ARE ANOTHER OPTION.  
9 AND THAT'S DISCLOSED --

10 **THE COURT:** OKAY. WHERE IS THAT?

11 **MR. KELLA:** AND THAT'S DISCLOSED -- THAT'S DISCLOSED IF  
12 WE LOOK AT FIGURE FIVE AND FIGURE FOUR FOR MMC AND SD WE SEE PIN  
13 THREE, WHICH IS MCMD. AND THOSE ARE COMMAND SIGNALS. AND THOSE  
14 ARE DISCUSSED IN THE '424 PATENT AT COLUMN SIX, LINE EIGHT TO  
15 NINE.

16 A COMMAND SIGNAL. IT SAYS "CMD" IN THE SPEC, BUT THERE'S A  
17 CERTIFICATE OF CORRECTION THAT CORRECTS "CMD" TO READ AS MCMD."

18 AND COMMAND CONTROL SIGNALS ARE ALSO DISCUSSED IN COLUMN  
19 FIVE, LINES 65 TO 67. AND ALSO IN COLUMN SIX, LINES 51 TO 53.

20 AND ONE OF ORDINARY SKILL IN THE ART -- AND THIS IS  
21 CONFIRMED BY EXPERT TESTIMONY -- IS GOING TO SEE IN THE SPEC WHEN  
22 WE'RE TALKING ABOUT MMC AND SD, WE'RE TALKING ABOUT MCMD  
23 COMMANDS. AND UNDERSTAND THAT THAT IS A WAY TO IDENTIFY WHETHER  
24 AN MMC OR AN SD CARD HAS BEEN INSERTED.

25 AND MR. BUSCAINO IN PARAGRAPH --

1           **THE COURT:** TO DISTINGUISH BETWEEN THOSE TWO?

2           **MR. KELLA:** TO DISTINGUISH BETWEEN THOSE TWO CARD  
3 TYPES, CORRECT.

4           **THE COURT:** BUT NOT ALL THE OTHERS.

5           **MR. KELLA:** WELL, IT DEPENDS ON THE EMBODIMENT.

6           **THE COURT:** HOW ARE YOU GOING TO TELL WHETHER IT'S AN X  
7 WHATEVER? THERE'S ABOUT SIX OF THEM.

8           **MR. KELLA:** SURE. AND I CAN EXPLAIN HOW IT WORKS IN  
9 PRACTICE. AND THIS IS --

10          **THE COURT:** WELL, NO. WHAT I NEED TO SEE IS WHERE IT  
11 IS IN THE SPECIFICATION.

12          **MR. KELLA:** SURE. THAT'S IN COLUMN -- IN FIGURE FIVE,  
13 IN FIGURE FOUR.

14          **THE COURT:** SO THIS IS -- YOU ARE REFERRING TO THOSE  
15 SAME CHARTS WITH THE 18 PINS AND THE DIFFERENT CARDS.

16          **MR. KELLA:** CORRECT. AND IN TERMS OF THIS, THIS IS THE  
17 ATMEL CASE WE HAVE CITED. THE PERSPECTIVE AND THE VIEWPOINT OF  
18 ONE OF ORDINARY SKILL IN THE ART CAN BE USED TO UNDERSTAND WHAT  
19 STRUCTURE IS DISCLOSED.

20          **THE COURT:** I'M AWARE OF THAT. BUT IT HAS TO BE  
21 WRITTEN DOWN SO THEY CAN LOOK AT IT AND SEE WHAT IT IS.

22          **MR. KELLA:** THAT'S CORRECT. AND THAT'S THE M --

23          **MR. SIMON:** YOUR HONOR, MAY I INTERRUPT ONE SECOND? I  
24 JUST WANT TO CORRECT SOMETHING. I WANT TO MAKE SURE WE DIDN'T  
25 MISSTATE ANYTHING. WE DO NOT AGREE THAT THE SPECIFICATION HAS TO

1 TELL AN EXPERT IN THIS FIELD HOW TO DO THIS.

2 AND THAT'S WHAT WE CITE IN OUR BRIEF. WHAT THE CASES SAY IS  
3 THAT ONE OF ORDINARY SKILL IN THE ART IS PRESUMED TO HAVE THAT  
4 KNOWLEDGE.

5 AND, FOR EXAMPLE, THERE'S A SPECIFICATION THAT SAYS:

6 "IF YOU WANT TO READ MMC CARDS AND SD CARDS, HERE'S  
7 WHAT YOU DO AND HERE ARE THE SIGNALS YOU SEND."

8 THOSE WERE ALL IN EXISTENCE AT THE TIME THE PATENT WAS  
9 FILED. IF YOU HAD TO PUT EVERYTHING ON HOW TO DO EVERYTHING IN  
10 THE PATENT, THE PATENTS WOULD BE LIKE PHONE BOOKS. SO THE LAW IS  
11 WE JUST HAVE TO TEACH ONE OF ORDINARY SKILL IN THE ART.

12 SO I JUST WANT TO MAKE IT CLEAR THAT WE DON'T AGREE THAT,  
13 FOR EXAMPLE, A CONTROLLER IS NOT SUFFICIENT OR THAT YOU HAVE TO  
14 PUT IN THE SPEC HOW THESE THINGS OPERATE. THAT'S REALLY AN  
15 ENABLEMENT ISSUE, A VALIDITY ISSUE.

16 **THE COURT:** WELL, THE MEANS-PLUS-FUNCTION CLAIMS YOU  
17 NEED TO IDENTIFY THE STRUCTURE IN THE SPECIFICATION.

18 **MR. SIMON:** CORRECT.

19 **THE COURT:** THAT'S WHAT I'M LOOKING FOR.

20 **MR. SIMON:** RIGHT. BUT YOU DON'T HAVE TO SAY HOW THE  
21 STRUCTURE WORKS IN THE SPECIFICATION. AND ONE OF ORDINARY SKILL  
22 IN THE ART, AND WE CITE THE CASES IN OUR BRIEF, WOULD UNDERSTAND  
23 THAT.

24 **THE COURT:** WELL, WHAT IS THE STRUCTURE DISCLOSED?

25 **MR. SIMON:** YES.

1           **THE COURT:** RIGHT. THAT'S WHAT I'M TRYING TO FIND.  
2 WHAT IS THE STRUCTURE DISCLOSED THAT WOULD EXPLAIN TO SOMEONE OF  
3 ORDINARY SKILL IN THE ART HOW TO MAKE THIS LITTLE SLOT RECOGNIZE  
4 WHAT KIND OF CARD HAS BEEN STUCK INTO IT.

5           **MR. SIMON:** RIGHT. AND THAT'S THE CONTROLLER. AND  
6 THAT'S THE STRUCTURE. YOU'RE ASKING US TO POINT OUT HOW THE  
7 STRUCTURE WORKS AND WHERE THAT'S EXPLAINED -- I'M SORRY -- HOW  
8 THE CONTROLLER WORKS AND DOES THE DETERMINATION OF WHAT CARD.  
9 AND WE'RE SAYING THAT'S NOT THE LAW. WE JUST HAVE TO IDENTIFY  
10 THE STRUCTURE. I'M JUST SAYING --

11           **THE COURT:** I THINK WE DIFFER ON THAT. SO I'M GOING TO  
12 LIMIT YOU TO THE STRUCTURE THAT I FIND IN THE SPECIFICATION. SO  
13 I'M TRYING TO GIVE YOU A CHANCE TO TELL ME WHAT THAT IS BECAUSE  
14 YOU ARE GOING TO BE LIMITED TO IT.

15           **MR. SIMON:** UNDERSTOOD. WE UNDERSTAND.

16           **THE COURT:** AND SO FAR I'VE GOT CARD DETECT LINES AND  
17 SOMETHING ABOUT COMMAND.

18           **MR. KELLA:** CORRECT, YOUR HONOR. AND I WOULD SAY A  
19 CONTROLLER THAT USES CARD DETECT LINES OR COMMAND SIGNALS.

20           **THE COURT:** COMMAND SIGNALS.

21           **MR. KELLA:** SUCH AS MCMD COMMANDS.

22           **THE COURT:** MCMD COMMANDS. OKAY.

23           **MR. KELLA:** AND THAT'S CONFIRMED IN EXHIBIT O TO  
24 PLAINTIFF'S OPENING BRIEF.

25           **THE COURT:** OKAY.

1           **MR. KELLA:** IN PARAGRAPH 40 OF MR. BUSCAINO'S  
2 DECLARATION. AND HE DISCUSSES SPECIFICALLY HOW HE AS ONE SKILLED  
3 IN THE ART LOOKS AT THIS, LOOKS AT THIS SPEC AND LOOKS AT THE  
4 FIGURES AND SEES THAT MCMD COMMANDS ARE DISCLOSED. AND  
5 UNDERSTANDS THAT THESE ARE MMC AND SD CARD TYPES. AND HOW ONE OF  
6 SKILL IN THE ART UNDERSTANDS THAT THERE ARE SPECIFICATIONS  
7 ASSOCIATED WITH THOSE CARD TYPES AND WOULD KNOW HOW TO IDENTIFY A  
8 CARD USING MCMD COMMANDS BASED ON THEIR KNOWLEDGE AS ONE SKILLED  
9 IN THE ART BASED ON THE DISCLOSURE OF A CONTROLLER THAT USES MCMD  
10 COMMANDS AND CARD DETECT LINES.

11           **THE COURT:** OKAY. SO YOU DON'T WANT MULTIPLEXING?

12           **MR. KELLA:** YOUR HONOR, WE DISAGREE WITH MULTIPLEXING.  
13 AND I CAN DISCUSS WHY IN ADDITION TO THE FACT THAT THE --

14           **THE COURT:** JUST TELL ME WHETHER YOU WANT IT OR NOT.

15           **MR. KELLA:** NO, WE DO NOT WANT MULTIPLEXING, YOUR  
16 HONOR.

17           **THE COURT:** OKAY.

18           SO THE TWO THINGS YOU WANT ARE CARD DETECT LINES OR MCMD  
19 COMMANDS WHICH WOULD DIFFERENTIATE BETWEEN SD AND MMC CARDS,  
20 ALTHOUGH IT WOULDN'T DIFFERENTIATE ANY OTHER KINDS OF CARDS.

21           **MR. KELLA:** QUITE HONESTLY, YOUR HONOR --

22           **THE COURT:** COMING BACK TO BITE YOU.

23           **MR. KELLA:** -- SOMEONE MIGHT BE ABLE TO BUILD A  
24 CONTROLLER WHERE MCMD COMMANDS ARE USED TO DIFFERENTIATE OTHER  
25 TYPES OF CARDS.

1           **THE COURT:**   THEY WILL GET A NEW PATENT.

2           **MR. KELLA:**   WELL, FOR PURPOSES OF THE DISPUTE HERE I  
3   THINK MCMD COMMANDS IS SUFFICIENT.

4           **THE COURT:**   OKAY.   DO YOU WANT TO RESPOND TO THAT?

5           **MR. WALKER:**   YES, YOUR HONOR.   THANK YOU.   CY WALKER.

6           **THE COURT:**   ON THE CARD DETECT LINES, THAT'S WHAT YOU  
7   THINK.

8           **MR. WALKER:**   THAT'S CORRECT.   AND IT'S NOT JUST WHAT IS  
9   DISCLOSED IN THE PATENT.   IT'S WHAT IS DISCLOSED AND CLEARLY  
10   LINKED TO THE CLAIMED FUNCTION.   SO YOU COULD HAVE A LOT OF WORDS  
11   YOU COULD POINT TO OF THINGS THAT ARE DISCLOSED AND YOU COULD  
12   COME UP WITH WAYS THAT EXPERTS MAY LOOK AT THOSE THINGS AND  
13   FIGURE OUT HOW TO DO SOMETHING WITH THEM IN ORDER TO DO THE  
14   CLAIMED FUNCTION.   BUT WHAT IS IMPORTANT IS WHAT IS DISCLOSED AND  
15   CLEARLY LINKED IN THE PATENT.

16           AND WHEN YOU LOOK AT THE PATENT --

17           **THE COURT:**   WE DON'T NEED TO WORRY ABOUT THAT BECAUSE  
18   THEY HAVE LIMITED THEMSELVES TO THE CARD DETECT LINES --

19           **MR. WALKER:**   UNDERSTOOD.

20           **THE COURT:**   -- WHICH YOU POINT OUT YOURSELF, AND THEN  
21   THIS MCMD COMMAND.

22           **MR. WALKER:**   AND SO THE MCMD COMMAND IS NEVER CLEARLY  
23   LINKED TO THE CLAIMED FUNCTION OF DETERMINING WHAT TYPE OF CARD  
24   IS IN THERE.

25           **THE COURT:**   OH.

1           **MR. WALKER:**   THERE'S NO DISCUSSION OF THAT AT ALL.

2           **THE COURT:**   OH.

3           **MR. WALKER:**   AND SO THAT'S WHY THE MCMD LINE, IT NEVER  
4 SAYS THAT YOU CAN USE THAT ANYWHERE IN THE PATENT TO  
5 DIFFERENTIATE BETWEEN THESE CARDS.

6           AND EON, THE EON CASE FROM THE FEDERAL CIRCUIT CASE RECENTLY  
7 SAYS WHAT AN EXPERT MIGHT BE ABLE TO KNOW OR COULD DO IN TERMS OF  
8 ENABLEMENT IS IRRELEVANT. IT'S COMPLETELY IRRELEVANT FOR  
9 PURPOSES OF A MEANS-PLUS-FUNCTION CLAIM.

10           IT'S STRICTLY LIMITED TO WHAT IS WITHIN THE FOUR CORNERS OF  
11 THE PATENT, DISCLOSED AND CLEARLY LINKED TO THAT CLAIMED  
12 FUNCTION. AND YOU CAN READ THIS ENTIRE PATENT AND IT WILL NOT  
13 TALK ABOUT THIS MCMD LINE BEING USED TO DIFFERENTIATE BETWEEN  
14 TYPES OF CARDS.

15           **THE COURT:**   MAYBE IF WE COULD TAKE THIS OPPORTUNITY IF  
16 YOU CAN DO IT BRIEFLY IF YOU THINK IT'S IMPORTANT TO EXPLAIN TO  
17 ME WHAT YOU WERE TALKING ABOUT IN TERMS OF THE '638 PATENT.

18           **MR. WALKER:**   WELL, I DON'T THINK IT'S IMPORTANT  
19 BECAUSE --

20           **THE COURT:**   OKAY.

21           **MR. WALKER:**   -- IT CERTAINLY -- IT DISCLOSES IT. IT  
22 CLEARLY LINKS IT. BUT WHEN YOU LOOK AT IT THOSE STRUCTURES ARE  
23 NOT IN PLAY IN THIS CASE. AND IN FACT THEY DON'T -- I'M SORRY?

24           **THE COURT:**   THE PASSIVE ADAPTER?

25           **MR. WALKER:**   EXCUSE ME?



1                   **THE COURT:**   THE PASSIVE ADAPTER?

2                   **MR. WALKER:**   CORRECT.   THE CLAIMS OF THE '424 AND '847  
3 ARE DRAFTED TO A UNIVERSAL ADAPTER.   IT FITS ALL THE DIFFERENT  
4 CARDS IN THEM WITHOUT ANY NEED FOR PASSIVE ADAPTERS.   AND SO IN  
5 THE ABSENCE OF THE PASSIVE ADAPTERS YOU DON'T HAVE THE STRUCTURE.  
6 FOR COMPLETENESS WE DON'T CARE IF IT'S IN THERE OR NOT.

7                   WE'VE IDENTIFIED THAT STRUCTURE IN OUR BRIEF.

8                   ONE POINT THAT I DO WANT TO MAKE CLEAR, THE MULTIPLEXING  
9 POINT THAT YOU BROUGHT UP.   SO WHEN THIS PATENT TALKS ABOUT THESE  
10 CARD DETECT LINES AND WHERE THOSE COME FROM.   AND THIS IS AT  
11 COLUMN SIX IN THE '424 PATENT.   AND IT IS AT LINES 36, 37.

12                  SO THIS PART STARTS OFF, AND IT SAYS:

13                         "THE DATA LINES FOR SMARTMEDIA AND XD INTERFACE CARDS  
14 HAVE A PARALLEL DATABUS OF EIGHT BITS."

15                  AND IT DENOTES THEM DO THROUGH D7 THAT OCCUPY PINS TEN  
16 THROUGH 17.   AND YOU CAN SEE THAT RIGHT HERE.   SO THESE PINK PINS  
17 HERE (INDICATING) DO THROUGH D7 OCCUPY PINS, CONNECTOR PINS TEN  
18 THROUGH 17.   YOU SEE THAT RIGHT THERE.

19                  AND SO THEN THE PATENT CONTINUES:

20                         "THESE DATABUS LINES ARE MULTIPLEXED TO SERVE AS CARD  
21 DETECT LINES FOR THE REMAINING TYPES OF CARDS."

22                  AND RIGHT HERE IN YELLOW YOU CAN SEE THE CARD DETECT LINES.  
23 AND SO YOU HAVE PARALLEL DATABUS LINES THAT ARE MULTIPLEXED TO  
24 SERVE AS CARD DETECT LINES FOR THE REMAINING TYPES OF CARDS.

25                  THAT'S WHAT IS CLEARLY DISCLOSED IN THE PATENT AND CLEARLY

1 LINKED DETECTION, THE DETECTION OF THE TYPE OF CARD.

2 AND SO THIS STRUCTURE THAT IS DISCLOSED TALKS ABOUT HOW IT  
3 DOES THAT. AND YOU CAN LOOK IN FIGURE FOUR, AS WELL, RIGHT?  
4 HERE AGAIN WE HAVE --

5 **THE COURT:** SO THAT'S ALL GOOD. THAT'S THE STRUCTURE  
6 THAT THEY ARE POINTING TO AND THE ONE THAT YOU ARE POINTING TO  
7 AND --

8 **MR. WALKER:** CORRECT.

9 **THE COURT:** -- THEY WOULD BE LIMITED TO THAT WITH THE  
10 POSSIBLE ADDITION OF THIS MCMD COMMAND. SO SEEMS LIKE WE'RE ALL  
11 SOMEWHAT IN AGREEMENT.

12 **MR. WALKER:** WELL, WE SAY THAT THE CARD DETECT LINES  
13 HAVE TO BE MULTIPLEXED WITH A PARALLEL DATABUS LINE. IF IT'S  
14 NOT -- BECAUSE THAT'S WHAT IT SAYS:

15 "THESE PARALLEL DATABUS LINES ARE MULTIPLEXED TO BE A  
16 CARD DETECT" --

17 **THE COURT:** OKAY. I WAS -- I MISUNDERSTOOD, THEN. I  
18 WAS ASSUMING THAT MULTIPLEXNESS WAS AN ALTERNATIVE.

19 **MR. WALKER:** NO.

20 **THE COURT:** AND THAT THAT WOULD BE SOMETHING ELSE THAT  
21 THEY MIGHT WANT TO POINT ME TO CITATIONS FOR SO THAT I COULD  
22 UNDERSTAND THAT THAT WAS PART OF THE STRUCTURE. AND THEY SAID,  
23 NO, THEY DIDN'T HAVE A SEPARATE MULTIPLEX STRUCTURE ARGUMENT.

24 NOW, YOU'RE SAYING THAT MULTIPLEX IS A NECESSARY PART OF  
25 CART DETECT LINES.

1           **MR. WALKER:** IT IS WHAT IS DISCLOSED AS OPERATING AS  
2 THE CARD DETECT LINES IN EVERY EMBODIMENT.

3           **THE COURT:** OKAY. WELL, IF IT'S IN THERE, THEN THAT  
4 WILL BE PART OF WHAT THE STRUCTURE WILL BE.

5           **MR. WALKER:** OKAY.

6           **MR. KELLA:** YOUR HONOR, MAY I BE HEARD ON THE  
7 MULTIPLEXING POINT AND ONE OTHER POINT BRIEFLY?

8           **THE COURT:** OKAY.

9           **MR. KELLA:** ON MULTIPLEXING WE'RE FINE IF THE COURT  
10 WOULD REQUIRE THE STRUCTURE TO OPTIONALLY USE MULTIPLEXING. THE  
11 ISSUE WE HAVE WITH ADDING THIS MULTIPLEXING IN IS TWOFOLD.  
12 MULTIPLEXING IS NOT STRUCTURE. MULTIPLEXING IS A FUNCTION. AND  
13 OUR JOB HERE IS TO CONSTRUE THE STRUCTURE, NOT THE FUNCTION, NOT  
14 THE IDENTIFYING.

15           AND DEFENDANTS HAVE NEVER PROPOSED A CONSTRUCTION OTHER THAN  
16 WHAT IS IN THE CLAIM ITSELF FOR IDENTIFYING THE TYPE OF CARD. SO  
17 MULTIPLEXING IS NOT STRUCTURE. AND I DON'T THINK DEFENDANTS WILL  
18 ACTUALLY SAY THAT MULTIPLEXING IS STRUCTURE. IT'S JUST NOT  
19 STRUCTURE.

20           **THE COURT:** WELL, THEY DO. THEY DO. I HAVE A QUOTE  
21 RIGHT IN FRONT OF ME WHERE THEY SAY THAT.

22           **MR. KELLA:** WELL. THEY SAY "WHEREIN."

23           **THE COURT:** RIGHT.

24           **MR. KELLA:** SO THEY SAY:

25           "A CONTROLLER THAT USES CARD DETECT LINES WHEREIN

1 CERTAIN LINES HAVE MULTIPLEXED WITH OTHER LINES."

2 THE COURT: RIGHT.

3 MR. KELLA: THAT'S DESCRIBING AN ENVIRONMENT.

4 THE COURT: WELL, IT'S DESCRIBING A STRUCTURE AND IN A  
5 MEANS-PLUS-FUNCTION CLAIM YOU ARE LIMITED TO THE STRUCTURE THAT'S  
6 DESCRIBED IN THE SPECIFICATION. SO IF THAT'S IN THERE, THEN,  
7 YES, THAT IS WHAT YOU'LL BE LIMITED TO AND ITS EQUIVALENTS.

8 MR. KELLA: SURE. WELL, MULTIPLEXING ITSELF IS NOT  
9 STRUCTURE. AND I REALLY DON'T THINK DEFENDANTS WILL SAY  
10 MULTIPLEXING IS STRUCTURE.

11 THE COURT: THEY DO SAY THAT.

12 MR. KELLA: IT'S A FUNCTION.

13 THE COURT: THEY DO SAY THAT. YOU MAY DISAGREE WITH  
14 THEM, BUT THEY CLEARLY SAY IT. BUT, ANYWAY, LET'S MOVE ON TO  
15 CONTACT PINS IN THE MOLDED PLASTIC.

16 MR. WALKER: IF I COULD JUST CORRECT ONE THING FOR THE  
17 RECORD. MY COLLEAGUES TELL ME THAT I MISSPOKE AND SAID THAT MCMD  
18 WAS A STRUCTURE. AND IF I DID SAY THAT, I WAS INCORRECT. AND IT  
19 WAS UNINTENTIONAL.

20 THE COURT: OKAY.

21 MR. WALKER: IT'S JUST A SIGNAL.

22 THE COURT: OKAY. SO WHAT IS A FLOATING PIN AND WHAT'S  
23 WRONG WITH OR DO WE NEED TO FURTHER EXPLAIN HOW EMBEDDED  
24 SOMETHING MUST BE TO BE INTEGRATED? ARE YOU TALKING ABOUT --

25 MR. KELLA: I'M HAPPY TO ADDRESS THAT, YOUR HONOR.

1 WITH RESPECT TO THE EMBEDDED LIMITATION THAT DEFENDANTS WANT  
2 TO PUT IN THERE, WE DON'T SEE WHAT THE POINT OF THAT IS. THE  
3 CLAIM ITSELF IS --

4 **THE COURT:** BECAUSE "INTEGRATED" IS A MUSHY WORD.  
5 "INTEGRATED" COULD MEAN ELECTRICALLY INTEGRATED OR LOGICALLY  
6 INTEGRATED OR THEORETICALLY INTEGRATED OR CONCEPTUALLY  
7 INTEGRATED. IT DOESN'T -- IT ISN'T A PHYSICAL WORD TO ME. SO IT  
8 SEEMS TO ME THAT WHAT WE NEED IS THIS CONTACT ACTUALLY BEING  
9 PHYSICALLY ATTACHED TO THE PLASTIC IN SOME WAY.

10 SO YOU TELL ME A DIFFERENT WAY. BUT IT'S GOT TO BE  
11 SOMETHING BESIDES "INTEGRATED."

12 **MR. KELLA:** WELL, I THINK -- I DON'T THINK -- TO BE  
13 QUITE HONEST, THE WAY I VIEW "INTEGRATED" I CAN'T THINK OF A  
14 BETTER WORD FOR IT. BUT IF WE'RE GOING TO SAY "EMBEDDED" --

15 **THE COURT:** "INTEGRATED" IS NOT A PHYSICAL WORD.

16 **MR. KELLA:** WELL, I THINK "SURROUNDED" WOULD BE AN  
17 APPROPRIATE WORD CHOICE.

18 **THE COURT:** "SURROUNDED"? THAT'S WRONG. YOU CAN'T  
19 CONDUCT ELECTRICITY IF YOUR CONTACT POINT IS SURROUNDED BY  
20 PLASTIC.

21 **MR. KELLA:** WELL --

22 **THE COURT:** PLASTIC DOESN'T CONDUCT, DOES IT?

23 **MR. KELLA:** I THINK THAT'S A VERY GOOD POINT AND THAT'S  
24 CORRECT. PLASTIC DOES NOT CONDUCT ELECTRICITY. BUT I THINK  
25 DEFENDANTS WANT THE EMBEDDED LIMITATION BECAUSE THEY WANT TO SAY

1 THAT BECAUSE THE CLAIM REQUIRES BEING EMBEDDED IT MUST BE  
2 COMPLETELY SURROUNDED BY MOLDED PLASTIC. IN OTHER WORDS --

3 **THE COURT:** I DON'T THINK THEY WOULD SAY THAT, EITHER,  
4 BECAUSE THEY WOULD UNDERSTAND THAT IT WOULDN'T WORK IF IT WERE  
5 COMPLETELY SURROUNDED.

6 SO I THINK EVERYONE IS IN AGREEMENT THAT IT MUST BE  
7 PHYSICALLY ATTACHED TO THE PLASTIC, BUT IT CAN'T BE FULLY  
8 SURROUNDED BY THE PLASTIC OR IT WOULDN'T CONDUCT. SO WE NEED  
9 SOME FURTHER DESCRIPTION. AND I CAN'T THINK HOW TO DO IT OTHER  
10 THAN PERHAPS WITH MEASUREMENTS LIKE THAN NANO WHATEVERS. OR,  
11 WHAT, EMBEDDED TO A DEGREE --

12 **MR. KELLA:** WELL --

13 **THE COURT:** -- SUCH THAT ENOUGH METAL ISN'T EMBEDDED SO  
14 THAT IT CAN STILL CONDUCT ELECTRICITY, OR SOMETHING LIKE THAT.

15 **MR. KELLA:** WELL, I DON'T THINK IT HAS TO BE -- I DON'T  
16 THINK IT HAS TO BE PHYSICALLY TOUCHING THE PLASTIC. AND I CAN  
17 PROVIDE A SCENARIO FOR THAT.

18 IF YOU HAVE A CONTACT PIN IS THAT INTEGRATED WITHIN THE  
19 MOLDED PLASTIC.

20 **THE COURT:** WHAT DO YOU MEAN BY THAT? WHAT DO YOU MEAN  
21 "INTEGRATED"? YOU'RE DEFINING IT.

22 **MR. KELLA:** SURROUND THE MOLDED PLASTIC.

23 **THE COURT:** NO, WE ALREADY AGREED IT CAN'T BE  
24 SURROUNDED.

25 **MR. KELLA:** WELL, I CAN'T BE COMPLETELY ENVELOPED BY

1 THE MOLDED PLASTIC.

2 **THE COURT:** OKAY. SO WHAT IS IT?

3 **MR. KELLA:** SO IF I'M USING MOLDED PLASTIC, AND I CAN  
4 USE IT ALMOST AS A GUIDE. AND ONE OF THE GOALS OF THE PATENT IS  
5 THAT --

6 **THE COURT:** USE WORDS.

7 **MR. KELLA:** SURROUNDED.

8 **THE COURT:** WE ALREADY RULED OUT "SURROUNDED." USE A  
9 DIFFERENT WORD.

10 **MR. KELLA:** WELL, AT LEAST PARTIALLY SURROUNDED.

11 **THE COURT:** "PARTIALLY SURROUNDED." OKAY. WE'LL GO  
12 WITH PARTIALLY SURROUNDED.

13 **MR. KELLA:** AND IN THAT EVENT THE MOLDED PLASTIC COULD  
14 SERVE THE FUNCTION BECAUSE IT CAN PREVENT THE CONTACT PIN FROM  
15 GETTING OFF COURSE WHEN CARDS ARE PULLED IN AND OUT.

16 **THE COURT:** WHAT IS A FLOATING CONTACT PIN?

17 **MR. KELLA:** QUITE HONESTLY, YOUR HONOR, I'M NOT SURE  
18 EXACTLY WHAT A FLOATING CONTACT PIN IS. AND I THINK WE WILL BE  
19 BACK HERE ARGUING THAT.

20 **MR. MAIORANA:** I CAN TELL YOU WHAT A FLOATING PIN IS,  
21 YOUR HONOR.

22 THIS IS DAVID MAIORANA, YOUR HONOR. THANK YOU.

23 THE REASON THAT WE'RE TALKING ABOUT FLOATING PINS, YOUR  
24 HONOR, IS NOT BECAUSE WE'RE TRYING TO MANUFACTURE SOME  
25 NONINFRINGEMENT ARGUMENT. THE REASON WE'RE HERE IS BECAUSE THEY

1 DISTINGUISHED FLOATING PINS DURING PROSECUTION IN ORDER TO GET  
2 THEIR PATENT.

3 WHAT I'M SHOWING ON THE SCREEN IS THE HUNG-JU PATENT YOU  
4 HEARD EARLIER. THESE ARE FLOATING PINS. THEY TOLD THE EXAMINER  
5 THEY ARE FLOATING PINS.

6 AND THE REASON IT'S CALLED A FLOATING PIN IS IT FLOATS LIKE  
7 A BOAT. A BOAT FLOATS ON THE WATER. THE FLOATING PIN FLOATS.  
8 YOU STICK A CARD IN, IT KIND OF FLOATS UP AND LIFTS UP WHEN THE  
9 CARD IS UNDER. THAT'S WHY THEY ARE CALLED "FLOATING."

10 **THE COURT:** I'M ASSUMING THERE'S NOT WATER IN THESE  
11 THINGS.

12 **MR. MAIORANA:** NO. NO.

13 **THE COURT:** WHAT IS IT FLOATING ON?

14 **MR. MAIORANA:** IT'S FLOATING OVER THE SURFACE OF THE  
15 CONNECTOR. IF YOU LOOK AT THE SCREEN, YOUR HONOR, YOU CAN SEE  
16 HERE THE BOTTOM PART. THIS IS FIGURE FIVE FROM THE HUNG-JU  
17 PATENT. THE PIN IS CONNECTED AT ONE END. IT GOES THROUGH THE  
18 PLASTIC. AND THE MAJORITY OF THE PIN STICKS OUT, FLOATS OVER THE  
19 SURFACE. IT'S NOT IN THE PLASTIC. IT'S OVER ON TOP OF IT.

20 AND SO THE PIN FLOATS --

21 **THE COURT:** THE LITTLE CURVED PORTIONS.

22 **MR. MAIORANA:** THE WHOLE THING THAT YOU'RE SEEING HERE  
23 IS FLOATING OVER THE PLASTIC.

24 **THE COURT:** WELL, IS IT ATTACHED TO THE PLASTIC?

25 **MR. MAIORANA:** IT'S NOT SHOWN IN THIS FIGURE, BUT I'LL



1 SHOW YOU IN THE PATENT, THE '443 PATENT, A BETTER DEPICTION. BUT  
2 I WANT TO SHOW YOU THE PRIOR ART SHOWS FLOATING PINS. DURING  
3 PROSECUTION --

4 **THE COURT:** I DON'T KNOW IF IT DOES OR NOT. I CAN'T  
5 TELL FROM THAT PICTURE WHETHER IT'S ATTACHED TO THE PLASTIC OR  
6 ISN'T.

7 **MR. MAIORANA:** SO DURING THE PROSECUTION --

8 **THE COURT:** YOU'RE SAYING A FLOATING PIN IS UNATTACHED  
9 TO THE PLASTIC?

10 **MR. MAIORANA:** SO IN SOME EMBODIMENTS WHAT HAPPENS IS  
11 THE PLASTIC IS MOLDED WITH SLITS IN IT. AND THEN, THE PINS SLIDE  
12 THROUGH THE SLITS. AND THE PIN THEN STICKS OUT AT THE OTHER END  
13 AND FLOATS OVER THE PLASTIC. SO JUST ONE END IS SORT OF HELD --

14 **THE COURT:** PART OF THE PIN FLOATS. THE OTHER PART IS  
15 IN THE SLIT, PRESUMABLY.

16 **MR. MAIORANA:** THE PIN HAS TO BE CONNECTED SOMEWHERE  
17 OTHERWISE IT IS GOING TO FALL OUT OF THE DEVICE. SO IN SOME  
18 EMBODIMENTS, IN SOME PRODUCTS THE PIN IS CONNECTED AT ONE END AND  
19 THE REST OF IT STICKS OUT AND FLOATS OVER IT LIKE I WAS SHOWING  
20 YOU IN HUNG-JU. SO --

21 **THE COURT:** WELL, THAT'S FINE. BUT THE PART THAT  
22 DOESN'T STICK OUT IS EMBEDDED IN THE PLASTIC OR PARTLY SURROUNDED  
23 BY THE PLASTIC.

24 **MR. MAIORANA:** SO I'M GOING TO EXPLAIN WHY WE CHOSE THE  
25 WORD "EMBEDDED," BUT I WANT TO POINT OUT WHY FLOATING PINS

1 MATTER.

2 THEY WERE -- THE CLAIMS WERE REJECTED OVER THE HUNG-JU  
3 REFERENCE THAT I JUST SHOWED YOU. AND SO IN THE PROSECUTION  
4 HISTORY -- THIS IS THE '443 PATENT -- RESPONSE TO THE NOVEMBER  
5 2ND, 2006 OFFICE ACTION, THE APPLICANT SAID:

6 "AS CAN BE SEEN FROM FIGURE FIVE OF HUNG-JU," WHICH I  
7 JUST SHOWED YOU, "THE PINS 104A AND 104B, THOSE ARE THOSE  
8 FLOATING PINS, THEY ARE THE FLOATING STRUCTURES SITTING ON  
9 AN EXTERIOR OR INTERIOR SURFACE OF THE UPPER AND LOWER  
10 FRAMES 102 RATHER THAN BEING INTEGRATED WITHIN, THE TWO  
11 PLANAR ELEMENTS AS RECITED IN APPLICANT'S INDEPENDENT CLAIMS  
12 ONE AND 12."

13 **THE COURT:** WHAT ARE THE FRAMES?

14 **MR. MAIORANA:** THE FRAMES ARE 102 AND 102. THEY ARE  
15 THE STRUCTURE, THE MOLDED PLASTIC THAT THE PINS ARE CONNECTED TO.  
16 SO WHAT THEY ARE SAYING IS THIS, THIS ARRANGEMENT IN HUNG-JU IS  
17 DIFFERENT FROM INTEGRATED WITHIN. THIS WHOLE THING, FLOATING  
18 PINS SITTING ON --

19 **THE COURT:** PLANAR ELEMENTS ARE THE SAME AS THE FRAMES?

20 **MR. KELLA:** YOUR HONOR --

21 **MR. MAIORANA:** RIGHT. SO YES. THE PLANAR ELEMENTS ARE  
22 THE TWO PARTS THAT FORM THE SLOT THAT THE CARD IS INSERTED INTO.

23 **THE COURT:** AND THOSE ARE ALSO THE UPPER AND LOWER  
24 FRAMES.

25 **MR. MAIORANA:** RIGHT.

1           **THE COURT:** SO THE FRAMES ARE THE SAME AS THE PLANAR  
2 ELEMENTS.

3           **MR. MAIORANA:** AND WHAT'S DIFFERENT IS IN HUNG-JU IT'S  
4 A FLOATING PIN.

5           **THE COURT:** WELL, IN THE TOP PICTURE IT APPEARS TO BE  
6 ON TOP OF THE FRAME OR PLASTIC, OR WHATEVER. AND THE LOWER ONE  
7 IT'S --

8           **MR. MAIORANA:** UNDERNEATH.

9           **THE COURT:** -- IT WOULD APPEAR TO BE INSIDE WHEN YOU  
10 STICK -- I'M ASSUMING THOSE TWO PARTS GET STUCK TOGETHER. THE  
11 PINS SEEM TO BE INSIDE.

12           **MR. MAIORANA:** YES.

13           **THE COURT:** WHICH WOULD SEEM TO BE THE SAME AS BEING  
14 EMBEDDED WITHIN THE PLASTIC.

15           **MR. MAIORANA:** LET ME SHOW YOU FIGURES TO EXPLAIN IT A  
16 LITTLE FURTHER, YOUR HONOR. THIS IS FIGURE TWO OF THE '443  
17 PATENT, WHICH THEY IDENTIFIED AS PRIOR ART. THIS IS ANOTHER  
18 EXAMPLE OF FLOATING PINS. YOU SEE THE PIN IS CONNECTED AT ONE  
19 END, AND THEN IT FLOATS OVER THE SURFACE.

20           **THE COURT:** WELL, I JUST THINK TRYING TO USE "FLOATING  
21 PINS" TO DEFINE IT WHEN WE DON'T -- WE'RE DEFINING SOMETHING WITH  
22 USING A WORD THAT WE ALSO DON'T KNOW WHAT IT MEANS. SO WE'RE  
23 DEFINING X BY SAYING:

24                   "WELL, X IS Y."

25           AND WE SAY:

1 "WELL, WHAT IS Y?"

2 WE DON'T KNOW THAT EITHER, SO IT'S NOT HELPFUL IN DEFINING X  
3 TO SAY -- TO USE A WORD WE LIKEWISE DON'T UNDERSTAND. SO I'M NOT  
4 GETTING ANY PERCENTAGE IN DEFINING IT BY CALLING IT "NOT A  
5 FLOATING PIN."

6 LET'S DEFINE IT USING WORDS. YOU PROPOSE "EMBEDDED." I  
7 SORT OF LIKE THAT. TO ME THAT MEANS STUCK INTO, BUT NOT FULLY  
8 BURIED IN. BUT THEY THINK THAT THAT'S -- THEY DON'T LIKE THAT  
9 ONE. SO THEY ARE PROPOSING "PARTLY SURROUNDED," WHICH I COULD  
10 ALSO GO WITH.

11 SO DO YOU HAVE SOME OTHER IDEA?

12 **MR. MAIORANA:** THE REASON THAT --

13 **THE COURT:** WHAT'S YOUR PROBLEM WITH "PARTLY  
14 SURROUNDED"?

15 **MR. MAIORANA:** WELL, THE REASON THAT WE PUT THE  
16 NEGATIVE LIMITATION INTO OUR CONSTRUCTION IS BECAUSE WE HAVE  
17 TRIED TO COME UP WITH WORDS THAT SAY THE MEANING OF IT IT'S NOT A  
18 FLOATING PIN. BUT WE THINK IT'S CLEAR AND A PERSON SKILLED IN  
19 THE ART WOULD KNOW WHAT A FLOATING PIN IS AND THAT THAT CANNOT BE  
20 INCLUDED --

21 **THE COURT:** THE JURY WON'T.

22 **MR. MAIORANA:** BUT WE'LL HAVE AN EXPERT, YOUR HONOR,  
23 EXPLAIN IT TO THE JURY.

24 **THE COURT:** I NEED A DEFINITION THAT I CAN PUT IN A  
25 JURY INSTRUCTION. THAT'S WHAT WE'RE DOING HERE IS WE'RE WRITING

1 A JURY INSTRUCTION.

2 **MR. MAIORANA:** RIGHT. AND OUR INSTRUCTION TO THE JURY  
3 IS: IT'S EMBEDDED IN THE MOLDED PLASTIC, AND IT CANNOT BE A  
4 FLOATING PIN.

5 **THE COURT:** AND WHAT IS A FLOATING PIN?

6 **MR. MAIORANA:** IT'S A PIN THAT FLOATS OVER THE SURFACE,  
7 AS I JUST EXPLAINED.

8 **THE COURT:** IT WON'T FLOAT, BECAUSE IT'S NOT WATER.  
9 WE'RE GOING AROUND IN CIRCLES HERE.

10 **MR. MAIORANA:** WELL, IT FLOATS IN THE AIR, YOUR HONOR.

11 **THE COURT:** WE'RE NOT GOING TO DEFINE A TERM WITH  
12 ANOTHER TERM THAT WE THEN HAVE TO DEFINE. I UNDERSTAND YOUR  
13 ARGUMENT. YOU WANT IT TO BE MORE CLEAR THAT THEY ARE ESTOPPED BY  
14 THEIR DIFFERENTIATION OF HUNG-JU. AND YOU CAN MAKE THAT  
15 ARGUMENT. THAT'S FINE. BUT THAT ISN'T A DEFINITION. SO THE  
16 DEFINITION IS EITHER GOING TO BE "EMBEDDED" OR "PARTLY  
17 SURROUNDED."

18 WHAT'S YOUR PROBLEM WITH "PARTLY SURROUNDED"?

19 **MR. MAIORANA:** WELL, I MEAN, PARTLY SURROUNDED DOESN'T  
20 REQUIRE IT NECESSARILY TO EVEN CONTACT THE PLASTIC. AND  
21 MR. KELLA SAID A FEW MINUTES AGO HE DOESN'T EVEN THINK IT HAS TO  
22 TOUCH THE PLASTIC.

23 I MEAN "INTEGRATED" IN HAS TO MEAN IT'S INSIDE. IT'S INSIDE  
24 THE PLASTIC LIKE THEY SHOW --

25 **THE COURT:** WELL, I GUESS IT DOESN'T HAVE TO TOUCH IT

1 IF IT WERE SO WELL CONSTRUCTED THAT IT WAS HELD INSIDE A LITTLE  
2 SLIT AND IT COULDN'T GET OUT, BUT IT DIDN'T ACTUALLY TOUCH THE  
3 SLIT. I CAN PICTURE THAT. I SUPPOSE THAT WOULD BE OKAY.

4 **MR. MAIORANA:** WELL, THESE THINGS ARE MADE OUT OF  
5 PLASTIC. FOR THE PIN TO STAY IN THERE THEY HAVE TO BE -- THEY  
6 HAVE TO BE TOUCHING THE PLASTIC. THEY CAN'T --

7 **THE COURT:** NO. THEY COULD BE IN A LITTLE SLIT THAT  
8 WAS SO TIGHTLY FITTED THAT IT COULDN'T GET OUT EVEN THOUGH IT  
9 WASN'T ACTUALLY TOUCHING.

10 **MR. MAIORANA:** BUT IT'S A SLIT IN THE PLASTIC. IT  
11 STILL HAS TO TOUCH THE PLASTIC.

12 **THE COURT:** I KNOW. I MEAN, I SUPPOSE GRAVITY MIGHT  
13 MAKE IT GO DOWN TO THE BOTTOM PART.

14 **MR. MAIORANA:** IF WE DON'T PUT SOMETHING IN ABOUT  
15 FLOATING PINS, THEN WE'RE NOT GIVING ANY EFFECT TO THE DISCLAIMER  
16 IN THE PROSECUTION HISTORY.

17 **THE COURT:** YOU CAN ARGUE THAT. YOU CAN ARGUE ALL YOU  
18 WANT. IT'S NOT A DEFINITION.

19 **MR. MAIORANA:** OKAY. SO IT'S SAYING WHAT IT'S NOT.  
20 IT'S DEFINING IT BY WHAT IT'S NOT. IT'S STILL A DEFINITION, YOUR  
21 HONOR, WITH ALL DUE RESPECT.

22 **THE COURT:** YOU'RE DEFINING IT BY WHAT IT IS NOT. AND  
23 THE NOT IS NOT SOMETHING THAT WE KNOW WHAT IT IS. WE HAVE TO  
24 DEFINE THE NOT, AND THAT'S NOT HELPING US ANY. SO DON'T SAY THAT  
25 AGAIN.

1 OKAY. SO I'LL EITHER USE "EMBEDDED" OR "PARTLY SURROUNDED."

2 I'LL FIGURE IT OUT. OKAY.

3 SO THEN LET'S MOVE ON TO --

4 **MR. KELLA:** CAN I --

5 **THE COURT:** -- "INTERCONNECTION MEANS."

6 AND I GUESS, DEFENDANTS, MAYBE YOU'D WANT TO SAY NOT ONLY  
7 THAT IT'S NOT CONTACT PINS, BUT IT'S ALSO NOT ALL THE OTHER  
8 THINGS THAT IT ISN'T. OR MAYBE PLAINTIFFS WANT TO SAY THE TWO  
9 THINGS OR THE MORE THAN TWO THINGS THAT IT ISN'T.

10 **MR. MAIORANA:** RIGHT. WE AGREE WITH YOUR HONOR, YOUR  
11 PRELIMINARY COMMENT THAT THE INTERCONNECTION MEANS IS CONNECTING  
12 TWO THINGS. YOU SAID X AND Y. IT CAN'T BE THE X AND Y.

13 **THE COURT:** RIGHT.

14 **MR. MAIORANA:** AND THE CLAIM SAYS IT'S INTERCONNECTION  
15 MEANS BETWEEN ITS MAPPING BETWEEN CONTACT PINS AND SIGNAL LINES.  
16 IT CAN'T BE A CONTACT PIN. IT CAN'T BE A SIGNAL LINE. WE AGREE  
17 A HUNDRED PERCENT WITH THAT.

18 **THE COURT:** OKAY.

19 **MR. KELLA:** YOUR HONOR, JUST TO BE CLEAR, WE ARE NOT  
20 ARGUING THAT THE SAME PIN THAT'S A CONTACT PIN CAN BE AN  
21 INTERCONNECTION PIN OR AN INTERCONNECTION MEAN. THEY ARE  
22 SEPARATE CLAIM ELEMENTS. AND WE'RE NOT INTENDING TO CALL THE SAME  
23 THING CONTACT PINS AND INTERCONNECTION PINS. AND I THINK --

24 **THE COURT:** THEN YOU DON'T HAVE ANY PROBLEM WITH SAYING  
25 "CONDUCTIVE STRUCTURE." WELL, WE CAN SAY IT'S A CONDUCTIVE

1 ELEMENT STRUCTURE. I DON'T THINK THAT'S A BIG DEAL. THAT  
2 ELECTRICALLY CONNECTS. YOU AGREE IT ELECTRICALLY CONNECTS.

3 **MR. MAIORANA:** YES.

4 **THE COURT:** AND IT ELECTRICALLY CONNECTS CONTACT PINS  
5 WITH SIGNAL LINES. AND BY DEFINITION, THEN, IT IS NEITHER A  
6 CONTACT PIN NOR A SIGNAL LINE, BUT RATHER SOMETHING THAT CONNECTS  
7 THOSE TWO, ELECTRICALLY CONNECTS THEM AND IT'S A CONDUCTIVE  
8 ELEMENT.

9 **MR. MAIORANA:** OUR PROBLEM WITH PLAINTIFF'S  
10 CONSTRUCTION IS IT DOESN'T GO FAR ENOUGH. IT JUST SAYS "A  
11 CONDUCTIVE ELEMENT THAT ELECTRICALLY CONNECTS." IT DOESN'T  
12 SAY --

13 **THE COURT:** ALL RIGHT. THEN WE CAN ADD "ELECTRICALLY  
14 CONNECTS CONTACT PINS AND SIGNAL LINES."

15 **MR. MAIORANA:** AND SO WE BUILT INTO OUR CONSTRUCTION  
16 THAT THEY ARE SEPARATE. IT HAS TO BE SEPARATE FROM THE TWO  
17 THINGS IT'S CONNECTING.

18 SO OUR -- DEFENDANTS' PREFERENCE, YOUR HONOR, WOULD BE TO  
19 HAVE THE CONSTRUCTION SAY THAT IT'S SEPARATE AND DISTINCT FROM  
20 CONTACT PINS AND SIGNAL LINES, THE TWO THINGS THAT ARE BEING  
21 CONNECTED.

22 **THE COURT:** I GUESS WE CAN SAY THAT. CONDUCTIVE  
23 ELEMENTS THAT ELECTRICALLY CONNECT CONTACT PINS WITH SIGNAL LINES  
24 AND THAT ARE NEITHER CONTACT PINS NOR SIGNAL LINES.

25 **MR. MAIORANA:** YES. YES, YOUR HONOR.



1           **MR. KELLA:** I THINK WE ABSOLUTELY AGREE WITH THE FIRST  
2 PART. IF WE WANT TO SAY --

3           **THE COURT:** WELL, THAT'S BECAUSE IT WAS YOUR WORDS.

4           **MR. KELLA:** THAT'S RIGHT, YOUR HONOR. THAT ALWAYS  
5 MAKES IT EASY.

6           THE PROBLEM IS AS LONG AS NOTHING IN THAT CONSTRUCTION MEANS  
7 THAT THE CONTACT PINS AND INTERCONNECTION MEANS CAN'T BE  
8 MANUFACTURED FROM THE SAME PIECE OF METAL, WE'RE OKAY WITH THAT  
9 CONSTRUCTION.

10          **THE COURT:** WELL, WE'RE GOING TO LOOK BACK AND SEE  
11 WHETHER THEY WERE MANUFACTURED FROM THE SAME PIECE OF METAL?

12          **MR. KELLA:** I DON'T THINK WE NEED TO DO THAT ON CLAIM  
13 CONSTRUCTION. AND I THINK IT WOULD IMPROPER TO PUT THAT INTO THE  
14 CLAIM CONSTRUCTION. THE PROBLEM IS THAT IN DEFENDANTS' BRIEF  
15 THEY CONSTRUE THEIR OWN CONSTRUCTION. SO THEY ARE PROPOSING  
16 THEIR CONSTRUCTION, AND THEN THEY ARE SAYING:

17               "YOUR HONOR, THIS IS WHAT OUR CONSTRUCTION MEANS."

18           AND THEY SAY IT EXPLICITLY IN THEIR BRIEF AT PAGE 28.

19               "THE SAME PIECE OF METAL CANNOT BE BOTH AN  
20 INTERCONNECTION MEANS AND A CONTACT PIN."

21          **THE COURT:** I AGREE WITH THAT. IT CANNOT. YOU COULD  
22 START WITH THE SAME PIECE OF METAL AND YOU COULD CUT IT IN HALF.  
23 AND YOU COULD TURN ONE HALF INTO A CONTACT PIN AND TURN THE OTHER  
24 HALF INTO AN INTERCONNECTING LINE. THAT WOULD BE FINE.

25           BUT IF THEY ARE STILL PHYSICALLY ONE PIECE OF METAL THEN,

1 NO, THEY CAN'T BE BOTH THINGS.

2 **MR. KELLA:** WELL, THEY CAN BE -- YOU CAN HAVE -- WELL,  
3 GOING BACK TO YOUR EXAMPLE, IF YOU STARTED WITH ONE THING AND YOU  
4 CUT IT IN HALF AND YOU SOLDERED IT BACK TOGETHER, YOU'D STILL  
5 HAVE AN INTERCONNECTION MEANS THAT ELECTRICALLY CONNECTS THE  
6 CONTACT PIN TO THE SIGNAL LINE.

7 AND IT'S VERY TYPICAL TO HAVE STRUCTURE --

8 **THE COURT:** YOU SOLDER THESE THINGS TOGETHER?

9 **MR. KELLA:** ABSOLUTELY. ACTUALLY, THEIR EXPERT AT THE  
10 ITC TESTIFIED THAT WAS --

11 **MR. MAIORANA:** YOUR HONOR, THEY ARE CONFLATING THINGS  
12 IN THE CLAIMS. AND INTERCONNECTION MEANS CONNECTS X AND Y. THEY  
13 ARE TRYING TO SAY X AND Y AND THE INTERCONNECTION MEANS CAN ALL  
14 BE ONE PIECE OF METAL.

15 IT MAKES NO SENSE. YOU CAN'T HAVE ONE PIECE OF METAL  
16 CONNECT TO ITSELF.

17 **THE COURT:** AND YOU STARTED OUT WITH ONE PIECE OF METAL  
18 AND YOU CUT THEM IN HALF, AND THEN YOU SOLDERED THEM BACK  
19 TOGETHER.

20 **MR. MAIORANA:** YES. IT'S STILL ONE PIECE OF METAL. IT  
21 CAN'T CONNECT TO ITSELF. IT HAS TO --

22 **THE COURT:** WELL, HOW DO THESE THINGS CONNECT WITH ONE  
23 ANOTHER? BY SOLDERING OR BY SOME SORT OF LITTLE JOINT, LITTLE  
24 SCREW OR SOME LITTLE ELBOW JOINT OR SOMETHING?

25 **MR. MAIORANA:** RIGHT, BY WIRES. THE CONTACT PINS --

1           **THE COURT:**   HOW DO THE WIRES CONNECT WITH ONE ANOTHER?

2           **MR. MAIORANA:**   RIGHT, THEY ARE SOLDERED.

3           **THE COURT:**   THEY ARE SOLDERED.

4           **MR. MAIORANA:**   THEY'RE SOLDERED.

5           **THE COURT:**   OKAY.   SO YOU HAVE A PIECE OF METAL AND YOU  
6 CUT IT IN HALF, AND THEN YOU SOLDER IT BACK TOGETHER?

7           **MR. MAIORANA:**   NO.   WHAT HE'S TALKING ABOUT IS IN THE  
8 DEFENDANTS' PRODUCTS IN SOME INSTANCES YOU HAVE WHAT THEY ARE  
9 CALLING "THE INTERCONNECTION," THE CONTACT PIN AND THE  
10 INTERCONNECTION PIN AND THE SIGNAL LINE IS ALL ONE THING.   AND  
11 WE'RE SAYING YOU CAN'T CONNECT TO YOURSELF.   X AND Y CANNOT BE  
12 THE SAME THING.   INTERCONNECTION MEANS ARE CONNECTING TWO  
13 DIFFERENT THINGS.

14           **THE COURT:**   IF YOU CONNECT THEM BY SOLDERING THEM  
15 TOGETHER DOES THAT MAKE THEM ONE THING OR STILL TWO THINGS?

16           **MR. MAIORANA:**   THEY ARE STILL TWO THINGS.

17           **THE COURT:**   THEY ARE STILL TWO THINGS IF YOU SOLDER  
18 THEM.   THEY ARE ONE THING IF YOU DON'T CUT THEM APART IN THE  
19 FIRST PLACE.

20           WE'VE GOT SOME ANGELS DANCING ON THE HEAD OF A PIN HERE, I  
21 WOULD SAY.   BUT I GUESS WE'LL JUST HAVE TO WORRY ABOUT THAT  
22 LATER.

23           **MR. MAIORANA:**   YOU HAD IT RIGHT AT THE BEGINNING, YOUR  
24 HONOR.   X AND Y, IF SOMETHING IS CONNECTING X AND Y IT CAN'T BE  
25 THE SAME THING AS X AND Y.   OTHERWISE, IT MAKES NO SENSE.

1           **THE COURT:** THEN, THAT BEGS THE QUESTION OF WHETHER IF  
2 SOMETHING IS SOLDERED TOGETHER IS IT NOW ONE THING OR DOES IT  
3 REMAIN TWO THINGS?

4           **MR. MAIORANA:** THE CONSTRUCTION THAT WE WERE JUST GOING  
5 THROUGH, YOUR HONOR, THE DEFENDANTS AGREE WITH THAT. IT CAN'T  
6 BE --

7           **THE COURT:** OKAY. LET'S MOVE ON TO MEMORY MEDIA CARD.  
8 SO YOU TELL ME WHAT THE MEDIA IS IN THAT GROUP OF WORDS.

9           **MR. KELLA:** YES, YOUR HONOR. AND IF I COULD DIRECT YOU  
10 TO EXHIBIT 14 TO DEFENDANTS' BRIEF. AND THIS IS A PRIME EXAMPLE  
11 OF WHY THE MEDIA LIMITATION IS IMPORTANT AND WHY DEFENDANTS'  
12 CONSTRUCTION IS GOING WAY TOO BROAD HERE.

13           **THE COURT:** EXHIBIT 14 TO DEFENDANTS' BRIEF.

14           **MR. KELLA:** YES. AND I HAVE THE RELEVANT PASSAGES IN A  
15 SLIDE, IF THAT WOULD BE EASIER.

16           **THE COURT:** CAN YOU JUST TELL ME WHAT "MEDIA" IS?

17           **MR. KELLA:** ABSOLUTELY.

18           **THE COURT:** OKAY. WHAT IS IT?

19           **MR. KELLA:** IT'S MEDIA -- AND THIS IS DESCRIBED IN  
20 DEFENDANTS' OWN EXTRINSIC EVIDENCE. IT SAYS:

21           "DIGITAL MEDIA MEANS INSERTABLE REMOVABLE MEMORY MEDIA  
22 FOR STORING AND TRANSFERRING LARGE DIGITAL FILES, ESPECIALLY  
23 AUDIO, DATA AND IMAGE FILES."

24           AND THAT'S A DESCRIPTION OF MEDIA. MEDIA HAS --

25           **THE COURT:** SAY IT AGAIN.

1           **MR. KELLA:** WELL, THIS IS -- THIS IS THEIR EXTRINSIC  
2 EVIDENCE THAT SAYS:

3           "DIGITAL MEDIA MEANS INSERTABLE REMOVABLE MEMORY MEDIA  
4 FOR STORING AND TRANSFERRING LARGE DIGITAL FILES, ESPECIALLY  
5 AUDIO, DATA AND IMAGE FILES."

6           **THE COURT:** THAT'S THEIR EXPLANATION.

7           **MR. KELLA:** YEAH. I'M NOT SURE --

8           **THE COURT:** AND YOURS IS?

9           **MR. KELLA:** I'M NOT SURE IF THEY NOTICED THAT IN THEIR  
10 EXTRINSIC EVIDENCE BECAUSE THEY CERTAINLY DIDN'T POINT THAT OUT.  
11 BUT THIS SHOWS THAT THE WORD "MEDIA" HAS IMPORTANCE. AND "MEDIA"  
12 IS JUST NOT ANY DATA OUT THERE IN THE WORLD.

13           **THE COURT:** WELL, I AGREE IT'S IMPORTANT. AND I'M  
14 ASKING YOU FOR YOUR DEFINITION. AND YOU'RE TELLING ME YOUR  
15 DEFINITION IS WHAT THEY SAID.

16           **MR. KELLA:** WELL, SURE.

17           **MR. WALKER:** WE DID NOT SAY THAT. I MEAN, THEY PULLED  
18 THAT OUT OF A PIECE OF EXTRINSIC EVIDENCE WE SUBMITTED.

19           **THE COURT:** OKAY. BUT IF THAT'S THE DEFINITION YOU  
20 WOULD LIKE, YOU CAN PROPOSE THAT, AND I CAN HEAR FROM THEM WHY  
21 THEY DON'T LIKE IT.

22           **MR. KELLA:** SURE. AND I THINK FOR MEDIA, A MEMORY  
23 MEDIA CARD IS A MEMORY CARD THAT STORES MEDIA SUCH AS LARGE  
24 DIGITAL FILES, ESPECIALLY AUDIO, DATA AND IMAGE FILES.

25           **THE COURT:** SO MEDIA IS A LARGE DIGITAL FILE. HOW

1 LARGE?

2 **MR. KELLA:** WELL, SO --

3 **THE COURT:** HOW LARGE IS LARGE?

4 **MR. KELLA:** AGAIN, I THINK SOME THINGS BECOME ISSUES OF  
5 FACT AND WE NEED TO HEAR FROM PEOPLE OF ORDINARY SKILL IN THE  
6 ART. BUT THE POINT IS MEDIA IS NOT JUST ANY DATA.

7 **THE COURT:** NO. IT'S A LARGE FILE, NOT A SMALL FILE.  
8 AND IT'S ESPECIALLY THOSE THINGS YOU SAY, BUT IT DOESN'T SOUND  
9 LIKE IT'S LIMITED. YOU'RE NOT SAYING IT'S LIMITED TO THOSE  
10 THINGS YOU SAID. BUT LET'S PUT -- LET'S SET ONE THING ASIDE.

11 ONE CANDIDATE FOR MEDIA IS THE STORAGE MEDIA ITSELF, THE CD,  
12 THE MAGNETIC TAPE, THE HARD DRIVE. YOU'RE NOT SAYING THAT.

13 **MR. KELLA:** WELL, I THINK --

14 **THE COURT:** YOU'RE NOT SAYING THAT.

15 **MR. KELLA:** THAT'S NOT WHAT I'M SAYING.

16 **THE COURT:** OKAY. SO IF IT'S NOT THAT THEN THE MEDIA  
17 IS THE THING THAT'S ON THE MEMORY CARD. IT'S THE THING THAT  
18 YOU'RE TRYING TO READ. THE CONTENT. OKAY.

19 SO THE CONTENT THEN IS WHAT? WE KNOW IT'S DIGITAL. WE KNOW  
20 IT'S A FILE. YOU WANT IT TO BE A LARGE FILE. THAT'S OKAY IF WE  
21 KNOW HOW LARGE IS LARGE. AND YOU THINK IT'S ESPECIALLY CERTAIN  
22 THINGS, BUT THAT DOESN'T MEAN IT ISN'T OTHER THINGS.

23 SO ALL WE'RE GETTING DOWN TO IS A LARGE DIGITAL FILE.

24 **MR. KELLA:** WELL, JUST TO BE CLEAR, WE'RE TALKING ABOUT  
25 A MEMORY MEDIA CARD. SO IT'S A MEMORY CARD CAPABLE OF STORING

1 MEDIA.

2 **THE COURT:** YES.

3 **MR. KELLA:** AND MEDIA CAN BE -- IT IS DIGITAL MEDIA  
4 WHICH IS --

5 **THE COURT:** WELL, DON'T USE THE WORD TO DEFINE THE  
6 WORD.

7 MEDIA IS A DIGITAL FILE.

8 **MR. KELLA:** LARGE DIGITAL FILES.

9 **THE COURT:** LARGE DIGITAL FILE.

10 **MR. KELLA:** AND EXAMPLES ARE AUDIO, DATA AND IMAGE  
11 FILES.

12 **THE COURT:** OKAY.

13 **MR. KELLA:** YOU COULD ALSO HAVE VIDEO FILES. YOU COULD  
14 HAVE --

15 **THE COURT:** SO THAT'S KIND OF -- AUDIO, DATA AND IMAGE  
16 KIND OF COVERS THE TERRITORY. THAT COULD INCLUDE NUMBERS. IT  
17 COULD INCLUDE WORDS. IT COULD INCLUDE ONES AND ZEROS. IT COULD  
18 INCLUDE MUSIC, VIDEO, RINGTONES, WHATEVER. IT'S NOT GOING TO  
19 EXCLUDE SIM CARDS, IF THAT'S WHAT YOU'RE GETTING AT, BECAUSE SIM  
20 CARDS HAVE DATA ON THEM.

21 **MR. KELLA:** WELL, I DON'T THINK JUST ANY DATA IS MEDIA.  
22 IN OTHER WORDS, IF I HAVE --

23 **THE COURT:** SURE. IT'S A LARGE -- WELL, IT HAS TO BE  
24 LARGE, YOU SAID. IT HAS TO BE IN A FILE, YOU SAID. BUT ALL  
25 DIGITAL STUFF IS IN FILES. THEY ARE NOT ALL LARGE. THAT'S TRUE.

1 SO IF YOU WANT TO SAY HOW LARGE IT HAS TO BE, MAYBE YOU CAN  
2 EXCLUDE SIM CARDS BECAUSE THEY DON'T HAVE LARGE FILES. BUT THEY  
3 CAN HAVE LARGE FILES.

4 **MR. KELLA:** WELL, YOUR HONOR, THE SAME PIECE OF  
5 EXTRINSIC EVIDENCE DEFENDANTS CITE, THEY TALK ABOUT BOTH DIGITAL  
6 MEDIA. AND THEN, IT TALKS ABOUT SIM CARDS. AND IT TALKS ABOUT  
7 SIM CARDS DIFFERENTLY. AND THIS IS WHAT IT SAYS. AND THIS IS AT  
8 EXHIBIT --

9 **THE COURT:** I DON'T UNDERSTAND WHY YOU'RE TELLING ME  
10 THIS. I'M ASKING YOU FOR YOUR DEFINITION OF "MEDIA" AND YOU'RE  
11 TELLING ME SOMETHING THEY SAID. WHY IS THAT HELPFUL?

12 **MR. KELLA:** WELL, I'M SAYING SIM CARDS HAVE TO BE  
13 EXCLUDED FROM THE DEFINITION.

14 **THE COURT:** I DON'T SEE HOW.

15 **MR. KELLA:** WELL, BECAUSE IT'S THEIR EVIDENCE.

16 **THE COURT:** YOU GIVE ME WORDS. YOU TELL ME WHAT MEDIA  
17 IS THAT DON'T INCLUDE SIM CARDS, AND THEN I'D BE INTERESTED TO  
18 HEAR IT.

19 **MR. KELLA:** WELL, I THINK THAT'S WHY THE MEDIA TERM IS  
20 IMPORTANT.

21 **THE COURT:** IT'S IMPORTANT. I AGREE WITH YOU. THAT'S  
22 WHY I'M TRYING TO ASK YOU WHAT IT MEANS.

23 **MR. KELLA:** WELL, I THINK IT'S DIFFICULT TO COME UP  
24 WITH A BETTER WORD FOR "MEDIA" THAN THE WORD "MEDIA" ITSELF.

25 **THE COURT:** WELL, BUT ONE OF THE PRINCIPLES OF DEFINING



1 THINGS IS YOU DON'T USE THE WORD YOU'RE DEFINING WITHIN YOUR  
2 DEFINITION.

3 SO IF YOU THINK I NEED TO DEFINE -- WELL, I THINK I NEED TO  
4 DEFINE "MEDIA, MEMORY MEDIA CARD." THEN, I NEED A PROPOSAL AS TO  
5 WHAT "MEDIA" MEANS THAT DOESN'T USE THE WORD "MEDIA." AND IF YOU  
6 GIVE ME A PROPOSAL THAT I CAN USE AND YOUR PROPOSAL EXCLUDES A  
7 SIM CARD, YOU'LL BE HAPPY, BUT YOU'LL HAVE TO COME UP WITH IT,  
8 BECAUSE I CAN'T THINK OF ONE.

9 **MR. KELLA:** LARGE FILES.

10 **THE COURT:** LARGE FILES. LARGE DIGITAL FILES. HOW  
11 LARGE? ARE YOU GOING TO HAVE A CUTOFF HERE? A MEGABYTE? A  
12 GIGABYTE? A TERABYTE?

13 **MR. KELLA:** WELL, I THINK MORE THAN A MEGABYTE.

14 **THE COURT:** MORE THAN A MEGABYTE? THAT'S PRETTY SMALL.

15 **MR. KELLA:** WELL, I MEAN, SIM CARDS --

16 **THE COURT:** SIM CARDS ARE --

17 **MR. KELLA:** -- ARE VERY SMALL. SIM CARDS IS LIKE A --

18 **THE COURT:** YOU HAVE YOUR WHOLE PHONE BOOK ON THERE.

19 **MR. KELLA:** WELL, A SIM CARD IS -- TYPICALLY, IT'S A  
20 CARD YOU PUT IN YOUR PHONE.

21 **THE COURT:** I KNOW.

22 **MR. SIMON:** IT HAS LIKE NUMBERS ON IT SO IT KNOWS  
23 YOU'RE ALLOWED ON THIS NETWORK.

24 **THE COURT:** IT CAN HAVE YOUR WHOLE PHONE BOOK IN IT.

25 **MR. KELLA:** WELL, QUITE HONESTLY I'M NOT --

1           **THE COURT:** I TAKE THE SIM CARD OUT OF MY ONE PHONE AND  
2 STICK IT IN MY OTHER PHONE. THE PHONE I STICK IT IN IS GOING TO  
3 HAVE MY CONTACTS IN THERE.

4           **MR. KELLA:** THAT'S NOT NECESSARILY -- I'M NOT QUITE  
5 HONESTLY --

6           **THE COURT:** BUT I THINK IT CAN HAPPEN. IT HAPPENS.

7           **MR. KELLA:** PERHAPS. BUT EVEN WHEN WE'RE TALKING ABOUT  
8 DATA, WHEN WE'RE JUST TALKING ABOUT A PHONE BOOK ON A PHONE, I  
9 MEAN THAT DOESN'T REQUIRE THAT MUCH DATA. I MEAN, WHEN WE'RE  
10 TALKING ABOUT JUST WORDS. I MEAN, THAT'S VERY -- YOU KNOW,  
11 THAT'S PRETTY RUDIMENTARY.

12           **THE COURT:** YES. WELL, EVEN SO, I'M NOT SURE I CAN  
13 REALLY JUSTIFY CALLING IT A LARGE DIGITAL FILE WHEN THERE'S  
14 NOTHING ABOUT THE WORDS THAT TELL ME IT NEEDS TO BE LARGE.

15           **MR. KELLA:** WELL, DEFENDANTS' OWN EXTRINSIC EVIDENCE.

16           **THE COURT:** A PHOTOGRAPH, A LITTLE TEN KILOBYTE  
17 PHOTOGRAPH. AND THAT WOULDN'T COUNT BECAUSE IT WAS TOO SMALL?

18           **MR. KELLA:** WELL, DEFENDANTS' OWN EXTRINSIC EVIDENCE  
19 SAYS MEDIA CONNOTES -- I'M PARAPHRASING. BUT IT'S AT EXHIBIT  
20 14-6, COLUMN SIX, LINE 15 TO 23. THAT THE SHORTAGE REQUIREMENT  
21 IS TYPICALLY HIGH CAPACITY, I.E., ABOUT ONE MEGABIT OR GREATER.

22           WHEN IT TALKS ABOUT SIM CARDS COLUMN -- AND THIS IS AT  
23 COLUMN FOUR, LINES 23 TO 42, IT SAYS SIMS OFFER ONLY A VERY  
24 LIMITED AMOUNT OF MEMORY, TYPICALLY LESS THAN ONE KILOBIT. AND  
25 ONE KILOBIT IS ABOUT -- IT'S A TENTH OF A MEGABIT. OKAY?

1 AND THIS IS AT THE TIME THIS PATENT WAS FILED, WHICH WAS IN  
2 1997. THAT'S NOT TODAY. AND IN TALKING ABOUT SIM CARDS IT GIVES  
3 EXAMPLES OF WHAT SIM CARDS HOLD: SMALL AMOUNT OF DATA FOR CALL  
4 METERING, PHONE STORAGE, AND IN SOME CASES VERY SHORT DATA  
5 MESSAGES.

6 AND IT SAYS IT'S A LOW MEMORY CAPACITY CARD FORMAT. IT'S  
7 KNOWN AS THE SUBSCRIBER IDENTIFICATION MODULE: SIM.

8 **THE COURT:** OKAY. WELL, I'M BEGINNING TO SEE THE MERIT  
9 IN THEIR CONSTRUCTION, WHICH IS A REMOVABLE MODULE CAPABLE OF  
10 STORING ELECTRONIC DATA. AND I GUESS THE ONLY THING YOU WOULD  
11 DISAGREE WITH THERE YOU WOULD SAY "CAPABLE OF STORING LARGE  
12 DIGITAL FILES."

13 **MR. KELLA:** THAT WOULD BE CORRECT, YOUR HONOR. I THINK  
14 THAT GETS US CLOSER TO THE IMPORT OF THE WORD "MEDIA."

15 AND ONE OTHER POINT IS I DON'T QUITE UNDERSTAND WHY THEY ARE  
16 USING THE WORD "MODULE" INSTEAD OF "CARD," ESPECIALLY FOR --

17 **THE COURT:** I THINK "CARD" IS THE WORD WE'RE DEFINING,  
18 AND WE DON'T DEFINE WORDS BY USING THAT SAME WORD.

19 **MR. KELLA:** WELL, MY POINT IS, YOU KNOW, CLAIM  
20 CONSTRUCTION IS NOT AN EXERCISE IN REDUNDANCY. AND WE DON'T NEED  
21 TO GIVE A DEFINITION TO EVERY CLAIM TERM ON CLAIM CONSTRUCTION.  
22 AND WHAT WE NEED TO DO IS RESOLVE THE PARTIES' DISPUTE.

23 **THE COURT:** YOU NEED TO SAY SOMETHING THAT I CAN TELL  
24 THE JURY SOMETHING IS. AND IF THEY THINK A CARD IS SOMETHING YOU  
25 GET ON MOTHER'S DAY, THEN THAT'S NOT GOING TO BE HELPFUL.

1           **MR. KELLA:** WELL, THE CLAIM TERM IS A MEMORY MEDIA  
2 CARD.

3           **THE COURT:** YES.

4           **MR. KELLA:** AND I DON'T THINK ANYBODY IS GOING TO THINK  
5 A CARD IS JUST ANY MODULE. AND SO THEY ARE TRYING TO BROADEN IT  
6 UP, I THINK, SO THEY CAN JUST SAY ANYTHING IS A MODULE. WELL,  
7 THAT'S A MODULE THAT STORES DATA. AND YOU CAN POINT TO ANY  
8 COMPONENT IN A COMPUTER.

9           **THE COURT:** OKAY. GIVE ME ANOTHER WORD THAT ISN'T  
10 "CARD."

11           **MR. KELLA:** YOUR HONOR, QUITE HONESTLY, I DON'T KNOW A  
12 BETTER WORD THAN "CARD" THERE IS. AND WE DON'T HAVE --

13           **THE COURT:** GENTLEMEN ON THE JURY THINK A CARD IS THE  
14 THING YOU GET IN THE MAIL ON FATHER'S DAY. AND YOU ARE GOING TO  
15 EXPLAIN TO THEM THAT A CARD IS REALLY A --

16           **MR. KELLA:** I THINK THE EXPERTS WOULD BE PERFECTLY  
17 QUALIFIED TO SAY THAT, TO EXPLAIN WHAT A CARD IS AND --

18           **THE COURT:** I NEED TO SAY IN A JURY INSTRUCTION WHAT A  
19 CARD IS. AND WHAT AM I GOING TO SAY?

20           **MR. KELLA:** WELL, I'M NOT -- I'M NOT SURE THAT WE NEED  
21 A JURY INSTRUCTION THAT DEFINES --

22           **THE COURT:** WELL, YOU THINK I DON'T, BUT I THINK DO  
23 BECAUSE I DON'T THINK "MEMORY MEDIA CARD" IS SELF-EVIDENT TO A  
24 JURY. I KNOW THAT'S WHAT YOU THINK. BUT I'M DISAGREEING WITH  
25 YOU. SO IF YOU WANT INPUT INTO WHAT I'M GOING TO SAY INSTEAD,

1 YOU NEED TO TELL ME SOMETHING. AND IF NOT, I'LL USE WHAT THEY  
2 HAVE TOLD ME.

3 **MR. KELLA:** PERHAPS SMALL FORM FACTOR REMOVABLE  
4 COMPUTER STORAGE DEVICE.

5 **THE COURT:** REMOVABLE COMPUTER STORAGE DEVICE.  
6 COMPUTER STORAGE. NO, IT'S NOT STORING COMPUTERS. REMOVABLE  
7 DEVICE FOR STORING ELECTRONIC DATA.

8 WE COULD SAY "DEVICE" INSTEAD OF "MODULE," YES. THAT WOULD  
9 WORK.

10 **MR. KELLA:** THAT WOULD BE BETTER, YOUR HONOR. AND JUST  
11 AS LONG AS WE CAN STILL HAVE A LIMITATION ON THERE LIKE LARGE  
12 DIGITAL FILES OR LARGE ELECTRONIC DATA THAT MAKES YOUR WORD  
13 KEEPING WITH THE IMPORT OF THE MEDIA --

14 **THE COURT:** WELL, CAPABLE OF STORING LARGE DIGITAL  
15 FILES. BUT IT'S ALSO CAPABLE OF STORING SMALL DIGITAL FILES,  
16 RIGHT?

17 **MR. KELLA:** IT IS. BUT TO BE A MEMORY MEDIA CARD, TO  
18 BE A MEMORY CARD, YOU HAVE TO BE CAPABLE OF STORING LARGE FILES  
19 IF YOU WANT TO BE A CARD THAT YOU CAN SELL AS A MEMORY CARD.

20 **THE COURT:** OKAY.

21 **MR. KELLA:** A MEMORY MEDIA CARD.

22 **THE COURT:** OKAY. DO YOU HAVE ANY PROBLEM WITH  
23 "REMOVABLE DEVICE CAPABLE OF STORING LARGE DIGITAL FILES OF  
24 ELECTRONIC DATA"?

25 **MR. WALKER:** YES, I THINK THE "LARGE" HAS NO PRESENCE

1 IN THE PATENT. THE PATENT DOESN'T DISCUSS --

2 **THE COURT:** WELL, HE MAKES A GOOD POINT. WHO IS GOING  
3 TO HAVE A MEMORY CARD THAT CAN'T STORE A LARGE FILE? YOU DON'T  
4 WANT TO SELL A MEMORY CARD THAT ONLY STORES A SMALL FILE.

5 **MR. WALKER:** WELL, I REALLY DON'T THINK THAT'S --

6 **THE COURT:** ESPECIALLY WHEN HE SAYS LARGE IS ONLY ONE  
7 MEGABYTE.

8 **MR. WALKER:** I REALLY DON'T THINK THAT THAT KIND OF  
9 ANALYSIS IS PROPER TO LOOK WHAT IS COMMERCIALY VIABLE AND THEN  
10 SAY WHAT IT'S LIMITED TO THAT IN THE PATENT.

11 THE PATENT DOESN'T TALK ABOUT HOW BIG FILES NEED TO BE OR  
12 HOW MUCH MEMORY HAS TO BE STORED. IT DOESN'T TALK -- YOU KNOW,  
13 THAT THIS HAS TO BE CAPABLE OF STORING PICTURES AND ALL THIS SORT  
14 OF STUFF. THERE'S NO BASIS WHATSOEVER IN THIS PATENT FOR THAT.

15 **THE COURT:** YOU'RE WORRIED THAT A SIM CARD WILL BE TOO  
16 SMALL AND YOU WON'T --

17 **MR. WALKER:** I'M NOT HERE TO REALLY TALK ABOUT A SIM  
18 CARD.

19 **THE COURT:** THAT SEEMS TO BE WHAT IS SUB ROSA GOING ON  
20 HERE.

21 **MR. WALKER:** CERTAINLY IN THE BACKGROUND IT IS. BUT  
22 OUR DEFINITION ISN'T ADDRESSING SIM CARD. AND IF I COULD JUST  
23 BRIEFLY -- YOU KNOW, THE PATENT IN HERE TALKS ABOUT MEMORY MEDIA.  
24 AND THEN, THE PLAINTIFFS POINT OUT IN THEIR BRIEF THAT HE USES  
25 THE WORD "MEMORY MEDIA," IT USES "FLASH MEDIA."

1 MEDIA IS A STRUCTURE. IT CAN MEAN CONTENT, BUT IN THIS  
2 PATENT WHEN IT USES MEDIA IT'S TALKING ABOUT STRUCTURE. AND YOU  
3 KNOW THAT BECAUSE WHEN IT SAYS --

4 **THE COURT:** STRUCTURE?

5 **MR. WALKER:** STRUCTURE, A THING, A PHYSICAL THING.

6 **THE COURT:** I DON'T KNOW WHAT YOU MEAN BY THAT.

7 **MR. WALKER:** A MEDIUM. SO YOU HAVE -- LET ME POINT YOU  
8 TO THE '424 PATENT.

9 **THE COURT:** THE MEDIA IS THE CONTENT THAT IS ON THE  
10 MEDIA CARD, I'M TOLD.

11 **MR. WALKER:** SO WHEN PEOPLE USE THE TERM "FLASH MEDIA,"  
12 THEY ARE TALKING ABOUT THIS (INDICATING). THEY ARE TALKING ABOUT  
13 A MEDIA. YOU MENTIONED I EARLIER. YOU CAN HAVE MAGNETIC MEDIA.

14 **THE COURT:** RIGHT. BUT THEY SAID THAT'S NOT WHAT IT  
15 MEANT. IT MEANT THE CONTENT THAT'S ON THE CARD.

16 **MR. WALKER:** AND I'M SAYING I DISAGREE WITH THEM. AND  
17 IT'S NOT THE CONTENT. THERE'S NOTHING THAT TALKS ABOUT CONTENT  
18 IN THIS PATENT. WHAT IT TALKS ABOUT IS -- AND I'M READING  
19 DIRECTLY FROM THE PATENT HERE. IT SAYS:

20 "WE'VE GIVEN YOU THESE EXAMPLES: XD, SMARTMEDIA,  
21 MMC, SD AND EVERYTHING ELSE."

22 BUT, IN GENERAL -- AND THIS IS QUOTE:

23 "IN GENERAL, THE EMBODIMENTS OF THE INVENTION ARE  
24 APPLICABLE TO ANY GENERIC FLASH MEDIA. ANY GENERIC FLASH  
25 MEDIA."

1           **THE COURT:** YOU'RE SAYING MEDIA MEANS THE STORAGE  
2 MEDIUM, TO-WIT: A CD, A DVR, A MAGNETIC TAPE.

3           **MR. WALKER:** YES.

4           **THE COURT:** A FLASH DRIVE, A USB DRIVE. ALL THOSE  
5 THINGS ARE THE MEDIA.

6           **MR. WALKER:** YES.

7           **THE COURT:** AND WHAT'S ON THEM DOESN'T MATTER.

8           **MR. WALKER:** IS IRRELEVANT. AND THE REASON --

9           **THE COURT:** IT COULD GO -- I MEAN, IT COULD BE BOTH.  
10 IT IS BOTH, IN FACT. BOTH ARE MEDIA, SO --

11           **MR. WALKER:** I UNDERSTAND.

12           **THE COURT:** -- DOES IT MATTER?

13           **MR. WALKER:** BUT WHEN YOU READ THIS PATENT AND YOU LOOK  
14 AT THE PLACES WHERE IT USES THE TERM "MEDIA" IN THE SPECIFICATION  
15 IT'S TALKING ABOUT A THING. IT'S NOT TALKING ABOUT CONTENT.  
16 IT'S TALKING ABOUT A PHYSICAL THING.

17           AND JUST TO GO ON, I MEAN, YOU HAVE MAGNETIC MEDIA, JUST  
18 LIKE YOU SAID. YOU HAVE OPTICAL MEDIA, LIKE CD'S AND DVD'S.

19           YOU ALSO HAVE FLASH MEDIA, WHICH IS A CIRCUIT.

20           **THE COURT:** OKAY. SO IT COULD BE THAT. BUT IN  
21 ADDITION TO THAT THE CARD HAS STUFF ON IT.

22           **MR. WALKER:** AND SO --

23           **THE COURT:** AND THE STUFF THAT IS ON IT CAN ALSO BE  
24 REFERRED TO AS "MEDIA" BECAUSE IT COULD BE A PHOTO OR A VIDEO OR  
25 A --



1           **MR. WALKER:** IT CERTAINLY CAN.

2           **THE COURT:** SO --

3           **MR. WALKER:** BUT THIS PATENT DOESN'T TALK ABOUT THOSE  
4 THINGS AS BEING MEDIA.

5           **THE COURT:** WELL --

6           **MR. WALKER:** WHEN THIS PATENT USES THE TERM "MEDIA"  
7 IT'S TALKING ABOUT A PHYSICAL THING.

8           **THE COURT:** OKAY. ALL RIGHT. OKAY. SO HOW DO I KNOW  
9 THAT IT REALLY MEANS THE CONTENTS AND NOT THE DEVICE ITSELF? AND  
10 DOES IT MATTER? DOES THIS MATTER?

11           **MR. WALKER:** WELL, I MEAN, THEY ARE TRYING TO PLACE  
12 LIMITATIONS ON SIZE NOW OF THE CONTENT THAT IT CAN STORE. AND  
13 THERE'S NOTHING IN THIS PATENT THAT TALKS ABOUT THE SIZE OF THE  
14 CONTENT. IT SAYS IT'S APPLICABLE TO ANY GENERIC TYPE OF FLASH  
15 MEDIA. THAT'S WHAT THE PATENT SAYS.

16           **THE COURT:** OKAY. SO I GUESS I TOOK YOUR ANSWER TO BE  
17 THE RIGHT ANSWER, BUT THEY DISAGREED WITH IT, WHICH I WASN'T  
18 AWARE OF IT. SO NOW I NEED TO KNOW WHY YOU THINK THE WORD  
19 "MEDIA" IN THIS PHRASE "MEMORY MEDIA CARD" MEANS THE CONTENTS  
20 THAT'S ON THE CARD VERSUS THE STORAGE MEDIUM THAT IS THE CARD.

21           **MR. KELLA:** WELL, FIRST, THEY ARE TWO DIFFERENT TERMS.  
22 THEY ARE TWO DIFFERENT WORDS, FLASH MEDIA AND MEMORY MEDIA. SO  
23 WE HAVE TO LOOK AT THEM IN CONTEXT. AND PEOPLE --

24           **THE COURT:** I'M ASKING THE MEDIA AS THE THING THAT  
25 HOLDS DATA OR THE CONTENT THAT IS BEING HELD. "MEDIA" COULD MEAN

1 BOTH THINGS. YOU TOLD ME THAT YOU THOUGHT IT MEANT THE CONTENT  
2 BEING HELD.

3 THEY SAY NO, IT MEANS THE STORAGE -- THAT'S DEFINING IT BY  
4 USING THE SAME WORDS.

5 **MR. WALKER:** IT'S THE PHYSICAL THING THAT STORES IT.  
6 THE DEVICE.

7 **THE COURT:** THE DEVICE ITSELF. SO IT IS, IN FACT,  
8 BOTH. IN COMMON PARLANCE THE WORD "MEDIA" IS USED FOR BOTH.

9 **MR. KELLA:** CORRECT.

10 **THE COURT:** SO HOW DO I KNOW IN THIS PHRASE IT REALLY  
11 MEANS THE CONTENTS AS OPPOSED TO THE STORAGE CAPACITY ITSELF?

12 **MR. KELLA:** WELL, I THINK IT'S USING AN ADJECTIVE, A  
13 MEMORY MEDIA CARD. WE'RE DESCRIBING A CARD, SO IT'S A MEMORY  
14 MEDIA CARD. BUT WHETHER IT'S --

15 **THE COURT:** SO IT'S A MEDIA CARD. COULD BE A CARD  
16 WHICH IS A MEDIUM FOR STORING MEDIA.

17 **MR. KELLA:** WELL, THE MEMORY IS THE MEDIUM FOR STORING  
18 MEDIA.

19 **THE COURT:** NO, MEMORY IS THE CONTENT. THE DEVICE IS  
20 LITTLE -- I DON'T KNOW -- LITTLE THINGS THAT YOU STICK IN  
21 COMPUTERS AND THEY STORE DATA.

22 **MR. KELLA:** MEMORY IS NOT CONTENT. MEMORY IS A  
23 PHYSICAL -- IS A PHYSICAL STRUCTURE THAT YOU PUT CONTENT ON. SO  
24 YOU PUT DATA INTO MEMORY. SO IF YOU JUST HAVE A MEMORY CARD THEN  
25 YOU SEE MEMORY CARD AND SAY:

1 "WELL, IT'S A CARD WITH MEMORY."

2 AND THEN, YOU SAY "MEMORY MEDIA CARD." AND THAT CONNOTES  
3 THAT, WELL, WHAT KIND OF MEMORY MEDIA CARD?

4 **THE COURT:** WELL, "MEDIA" COULD MODIFY "MEMORY," AS  
5 WELL. MEDIA FOR PUTTING MEMORY ON. SO A CD IS A MEMORY MEDIA  
6 DISK BECAUSE IT'S A MEDIUM, A CD. AND IT HAS MEMORY AND YOU CAN  
7 PUT DATA IN IT AND IT WILL STORE IT.

8 CLEARLY IT CAN BE BOTH. SO THE QUESTION IS: DOES IT MATTER  
9 WHICH ONE IS MEANT IN THIS PARTICULAR PHRASE? AND HOW DO WE  
10 EXPLAIN THAT TO A JURY? AND IF YOU THINK IT MATTERS AND IF YOU  
11 THINK IT MEANS "CONTENT" THEN YOU NEED TO TELL ME WHY YOU THINK  
12 IT MEANS "CONTENT" AND NOT THE STORAGE CAPABILITY ITSELF.

13 **MR. KELLA:** I THINK IT MEANS CONTENT IN THE CONTEXT OF  
14 THE CLAIM AND IN THE CONTEXT OF THE WORD "MEDIA," WHICH WE'VE  
15 LOOKED AT IN THE PATENT, EXHIBIT 14 THAT DEFENDANTS SUBMITTED TO  
16 GIVE MEANING TO "MEMORY MEDIA CARD."

17 I MEAN, THAT WAS DEFENDANTS' EXTRINSIC EVIDENCE THAT THEY  
18 HAVE SUBMITTED IN SUPPORT OF THEIR CONSTRUCTION.

19 **THE COURT:** OKAY. WELL, I'LL HAVE TO GIVE IT SOME  
20 THOUGHT.

21 **MR. WALKER:** WELL, JUST TO CONTINUE JUST BRIEFLY TO  
22 WRAP THIS UP, "MEMORY MEDIA" IS A GENERIC TERM, AND IT'S USED IN  
23 THE PATENT. "MEMORY MEDIA."

24 AND IT'S TALKING ABOUT THE THING ON WHICH YOU HAVE THE  
25 MEMORY. AND IT CAN BE, AS YOU SAID, DIFFERENT TYPES: FLASH

1 MEDIA. IT COULD BE OPTICAL MEDIA. IT CAN BE MAGNETIC MEDIA.  
2 BUT YOU CAN ALSO HAVE MEMORY MEDIA ON A COMPUTER, JUST IN THE  
3 COMPUTER ITSELF. AND SO YOU NEED THE WORD "CARD" BECAUSE THIS IS  
4 A REMOVABLE THING.

5 IT'S NOT MEMORY MEDIA THAT EXISTS IN YOUR COMPUTER. THE  
6 CARD MEANS THAT IT'S SEPARATE. JUST LIKE YOU SAID ABOUT YOU  
7 COULD HAVE A MEMORY MEDIA DISK, THAT SPECIFIES THAT THE MEDIA IS  
8 A DISK.

9 IN THIS PARTICULAR CASE I THINK A CARD, BECAUSE IT'S -- I  
10 THINK A CARD IS ANY REMOVABLE DEVICE.

11 **THE COURT:** IT COULD ALSO BE A MEDIA CARD. IT COULD BE  
12 A CARD UPON WHICH YOU PUT MEDIA. AND YOU COULD PUT --

13 **MR. WALKER:** IT CERTAINLY COULD BE.

14 **THE COURT:** -- PHOTOS ON IT. AND PHOTOS ARE MEDIA.  
15 AND THIS IS A CARD THAT HAS PHOTOS THAT ARE MEDIA ON IT.

16 **MR. WALKER:** IT CERTAINLY COULD BE.

17 **THE COURT:** WHAT'S WRONG WITH THAT? IT'S BOTH. IT'S A  
18 MEMORY MEDIA MEDIA CARD, IF YOU WANT TO SAY IT TWICE. HOW DOES  
19 IT MATTER? I MEAN, I GUESS I COULD TRY TO FIGURE THIS OUT. BUT  
20 I HOPE --

21 **MR. WALKER:** AS LONG AS THERE'S NO SIZE LIMITATION.

22 **THE COURT:** WHAT?

23 **MR. WALKER:** AS LONG AS THERE'S NO SIZE LIMITATION IT  
24 DOESN'T MATTER TO ME BECAUSE --

25 **THE COURT:** OKAY. YOU THINK IT DOES MATTER?

1           **MR. KELLA:** OUR POSITION, YOUR HONOR, IS IT DOES  
2 MATTER, BECAUSE WE'RE, AGAIN, REMOVING THE WORD "MEDIA."

3           **THE COURT:** I'M NOT GOING TO REMOVE IT. I THINK I  
4 MIGHT ADD ANOTHER ONE. I'M GOING TO CALL IT "MEMORY MEDIA MEDIA  
5 CARD," WHICH IS A MEMORY MEDIA WHICH HAS MEDIA ON IT.

6           **MR. WALKER:** AND IT'S REMOVABLE.

7           **MR. KELLA:** WELL, THAT WOULD BE FINE WITH PLAINTIFFS,  
8 YOUR HONOR.

9           **THE COURT:** ALL RIGHT. THEN, WE HAVE TYPE OF MEMORY  
10 MEDIA CARD. AND, AGAIN, PLAINTIFFS SAY NO CONSTRUCTION  
11 NECESSARY. I THINK ONE IS BECAUSE WE NEED TO KNOW HOW TO TELL  
12 WHETHER WE HAVE TWO CARDS OF TWO DIFFERENT TYPES OR DO WE HAVE  
13 ONLY TWO CARDS OF THE SAME TYPE?

14           SO I'M GOING TO NEED SOMETHING THAT TELLS ME HOW TO TELL  
15 WHAT'S A TYPE.

16           SO, PLAINTIFF, IF YOU HAD TO TELL ME SOMETHING, WHAT WOULD  
17 IT BE?

18           **MR. KELLA:** SD AND MMC ARE UNDOUBTEDLY TWO DIFFERENT  
19 CARD TYPES. THEY ARE TWO DIFFERENT CARD TYPES IN THE INDUSTRY.

20           **THE COURT:** WELL, THAT'S YOUR --

21           **MR. KELLA:** WELL, THERE ARE TWO DIFFERENT CARD TYPES  
22 IN --

23           **THE COURT:** -- POSITION, BUT DEFINE FOR ME WHAT IS A  
24 TYPE OF MEMORY CARD. HOW DO YOU DISTINGUISH ONE TYPE FROM  
25 ANOTHER?

1           **MR. KELLA:** A MEMORY CARD THAT IS DIFFERENT FROM  
2 ANOTHER MEMORY CARD.

3           **THE COURT:** IN WHAT WAY?

4           **MR. KELLA:** A MEMORY CARD THAT HAS ITS OWN  
5 SPECIFICATION.

6           **THE COURT:** SPECIFICATION OF WHAT?

7           **MR. KELLA:** OF HOW IT OPERATES.

8           **THE COURT:** IN WHAT SENSE?

9           **MR. KELLA:** I MEAN, IN THIS ESSENTIAL, YOUR HONOR.

10          **THE COURT:** IN OTHER WORDS, WHAT IS DIFFERENT? WHAT IS  
11 DIFFERENT? I SAY LET'S HAVE TWO DIFFERENT TYPES OF MUSIC,  
12 CLASSICAL AND --

13          **MR. WALKER:** WELL --

14          **THE COURT:** -- HIP HOP AND RAP. AND IS THAT TWO  
15 DIFFERENT TYPES? I DON'T KNOW. HOW DO I DECIDE WHAT IS A TYPE?

16          **MR. KELLA:** COULD I GIVE AN EXAMPLE ON THE ELMO THAT I  
17 THINK WOULD BE HELPFUL?

18          **THE COURT:** NO, BECAUSE I NEED A DEFINITION, NOT AN  
19 EXAMPLE.

20          **MR. KELLA:** A CARD THAT HAS ITS OWN STANDARD.

21          **THE COURT:** OF WHAT?

22          **MR. KELLA:** OF OPERATION.

23          **THE COURT:** WHAT --

24          **MR. KELLA:** WELL, THIS IS --

25          **THE COURT:** THAT DOESN'T HELP ME. I'VE GOT TWO CARDS

1 SITTING IN FRONT OF ME. HE SAYS THEY ARE THE SAME TYPE. YOU SAY  
2 THEY ARE DIFFERENT TYPES. HOW DO I KNOW?

3 **MR. KELLA:** EACH HAS A SPECIFICATION OF OPERATION THAT  
4 IS DIFFERENT. WELL, THE ISSUE IS HERE THERE'S MANY DIFFERENT  
5 WAYS A CARD CAN BE DIFFERENT. OKAY? ONE EXAMPLE THE SPEC GIVES  
6 SPECIFIC TO MMC AND SD IS THAT THEY CAN HAVE DIFFERENT PIN OUT.

7 AND THIS IS ALL CITED IN OUR BRIEF. BUT DURING  
8 PROSECUTION -- WELL, WHY DON'T WE START WITH THE SPEC? AND THIS  
9 IS CITED IN OUR BRIEF. BUT THE SPEC SAYS MMC AND SD HAVE  
10 DIFFERENT PIN OUT, MEANING THEY HAVE DIFFERENT NUMBERS OF CONTACT  
11 PINS. AND YOUR HONOR MENTIONED EARLIER:

12 "WHAT ARE THE THINGS ON THE CARDS THAT CONNECT TO THE  
13 CONTACT PINS?" THOSE ARE CONTACT PATHS. SD CARDS AND MMC  
14 CARDS HAVE DIFFERENT NUMBERS OF CONTACT PATHS. AND THE APPLICANT  
15 DESCRIBED DURING PROSECUTION --

16 **THE COURT:** SO IF YOU HAD TWO CARDS THAT WERE UTTERLY  
17 DIFFERENT IN EVERY WAY, BUT THEY BOTH HAPPEN TO HAVE EIGHT  
18 CONTACT PINS, THOSE WOULD BE THE SAME TYPE?

19 **MR. KELLA:** NO. NO.

20 **THE COURT:** WE'RE RESULT ORIENTED HERE. YOU BOTH ARE.  
21 YOU'RE TRYING TO COME UP WITH A DEFINITION THAT IS GOING TO LEAD  
22 TO THE ANSWER YOU WANT. BUT WHAT I NEED IS SOMETHING THAT'S  
23 BROADER THAN THAT THAT ACTUALLY DEFINES WHAT IS A TYPE AND HOW DO  
24 YOU DECIDE WHETHER SOMETHING IS A DIFFERENT TYPE.

25 **MR. KELLA:** WELL, IN THE INDUSTRY EVERY MULTIMEDIA CARD

1 IS GOING TO HAVE A STANDARD THAT SAYS THIS IS HOW MANY PINS YOU  
2 HAVE. THIS IS HOW MANY PINS YOU USE ON THE CARD, AND THESE ARE  
3 THE DIFFERENT SIGNALS THAT YOU PUT ON THE DIFFERENT PINS THAT ARE  
4 ASSOCIATED WITH THE DIFFERENT PINS, WHICH IS THE WHOLE POINT OF  
5 MAPPING IN THE SPEC, BECAUSE DIFFERENT CARDS USE PINS  
6 DIFFERENTLY.

7 **THE COURT:** SO DIFFERENT TYPES ARE CARDS THAT HAVE  
8 DIFFERENT NUMBERS OF CONTACT PINS?

9 **MR. KELLA:** THAT'S CERTAINLY ONE DIFFERENCE A CARD  
10 COULD HAVE.

11 **THE COURT:** AND WHAT WAS THE OTHER THING? SOMETHING  
12 ABOUT WHAT THEY PUT ON EACH PIN OR SOMETHING LIKE THAT?

13 **MR. KELLA:** YOU COULD HAVE DIFFERENT NUMBERS OF CONTACT  
14 PINS OR YOU COULD USE CONTACT PINS DIFFERENTLY.

15 **THE COURT:** OKAY. SO HOW DO YOU LIKE THAT.

16 **MR. WALKER:** WELL, WE THINK IF THEY HAVE INCOMPATIBLE  
17 ELECTRICAL AND PHYSICAL INTERFACES. IF THEY CAN BOTH --

18 **THE COURT:** I DON'T SEE WHY THEY HAVE TO BE  
19 INCOMPATIBLE.

20 **MR. WALKER:** WHAT'S THAT?

21 **THE COURT:** I DON'T SEE WHY THEY HAVE TO BE  
22 INCOMPATIBLE.

23 **MR. WALKER:** BECAUSE YOU HAVE AN ADAPTER. IT'S A  
24 UNIVERSAL ADAPTER. IT HAS DIFFERENT SETS OF CONTACT PINS FOR  
25 DIFFERENT TYPES OF INCOMPATIBLE CARDS THAT HAVE TO BE READ.



1           **THE COURT:** BUT YOU'RE DEFINING IT IN A RESULT-ORIENTED  
2 FASHION.

3           **MR. WALKER:** I'M NOT DEFINING IT RIGHT NOW. I'M JUST  
4 TRYING TO EXPLAIN.

5           **THE COURT:** WELL, THAT'S WHAT I WANT YOU TO DO.

6           **MR. WALKER:** WELL, I UNDERSTAND. AND I THINK WE HAVE.

7           **THE COURT:** WHY THEIR DEFINITION IS WRONG. YOUR  
8 DEFINITION INCLUDES "INCOMPATIBLE" AND I DON'T SEE WHY A TYPE  
9 NEEDS TO BE INCOMPATIBLE. SO YOU SAY TYPES OF MEMORY MEDIA CARDS  
10 HAVE INCOMPATIBLE ELECTRICAL AND PHYSICAL INTERFACES. I DON'T  
11 AGREE WITH THAT. THEY COULD BE DIFFERENT WITHOUT BEING UTTERLY  
12 INCOMPATIBLE SEEMS TO ME.

13           **MR. WALKER:** WELL, THE REASON TYPES OF MEMORY MEDIA  
14 CARD IS A TERM THAT IS USED IN THE PATENT. IT'S USED IN THE  
15 CLAIMS TO MEAN SOMETHING. AND IF YOU LOOK AT FIGURE FIVE, OR  
16 FIGURE FOUR, THEY SHOW YOU THE DIFFERENT -- WHAT THEY MEAN BY  
17 DIFFERENT TYPES OF CARDS. THEY ARE ACROSS THE TOP OF THE COLUMN  
18 HERE.

19           WE HAVE XD OVER HERE IN ONE COLUMN (INDICATING). WE HAVE  
20 MMC/SD HERE (INDICATING). WE HAVE MEMORY STICK HERE  
21 (INDICATING).

22           **THE COURT:** OKAY. TELL ME WHAT'S WRONG WITH SAYING  
23 IT'S DIFFERENT NUMBERS OF CONTACT PINS OR DIFFERENT USES OF THE  
24 CONTACT PINS. WHAT WOULD BE WRONG WITH THAT?

25           **MR. WALKER:** BECAUSE THAT --

1           **THE COURT:** LET'S ASSUME I DON'T -- I MEAN, I WILL GO  
2 BACK AND LOOK AT IT AGAIN. BUT IF I DON'T AGREE THEY HAVE TO BE  
3 INCOMPATIBLE, DO YOU HAVE A FALLBACK OR IS THEIR FALLBACK OKAY?

4           **MR. WALKER:** SO IF YOU HAVE TWO ENTIRELY COMPATIBLE  
5 CARDS, THEY WOULD CALL THOSE A DIFFERENT TYPE OF CARD?

6           **THE COURT:** YES. MAYBE THEY HAVE SOME OTHER  
7 DIFFERENCE. THEY ARE COMPATIBLE, BUT ONE IS BIGGER AND ONE IS  
8 SMALLER. OR ONE IS WHAT --

9           **MR. WALKER:** WELL, THE POINT WE'RE TRYING TO MAKE IS  
10 REALLY TO TRY TO BE CONSISTENT WITH THIS PATENT AND THE CLAIMS  
11 THAT ARE IN HERE. BECAUSE AS WE JUST TALKED ABOUT IN TERMS OF  
12 IDENTIFYING THE TYPE OF CARD, RIGHT? THE CLAIMS REQUIRE THAT YOU  
13 IDENTIFY THE TYPE OF CARD. AND THE STRUCTURE THAT IS REVEALED IS  
14 THE CARD DETECT PINS. BUT MMC AND SD SHARE THE SAME CARD DETECT  
15 PIN.

16           **THE COURT:** SO YOU DON'T HAVE TO HAVE A FALLBACK. YOU  
17 CAN DO EITHER/OR. YOU CAN SAY IF YOU DON'T THINK IT HAS TO BE  
18 INCOMPATIBLE, THEN I GIVE UP. AND THAT SOUNDS LIKE WHAT YOU'RE  
19 SAYING, SO LET'S MOVE ON.

20           **MR. WALKER:** I'M SORRY.

21           **THE COURT:** IF I DON'T USE "INCOMPATIBLE" THEN I'LL USE  
22 THEIRS. YOU'RE NOT GIVING ME ANY OTHER FALLBACK OPTION, WHICH IS  
23 FINE. YOU DON'T HAVE TO.

24           **MR. WALKER:** OKAY.

25           **THE COURT:** OKAY. SO ARE THERE OTHER TECHNOLOGY

1 PROPERTIES CASES IN THIS DISTRICT BESIDES THESE HERE? I HAVE A  
2 FEELING THAT JUDGE HAMILTON HAS SOME. AND NOT THAT I'M A GLUTTON  
3 FOR PUNISHMENT, BUT I WOULD LIKE TO MANAGE THESE THINGS  
4 EFFICIENTLY.

5 **MR. KELLA:** YOUR HONOR, I APOLOGIZE. COULD I JUST  
6 MENTION ONE MORE THING FOR THE RECORD?

7 **THE COURT:** NO, I REALLY NEED TO MOVE ON.

8 DOES JUDGE HAMILTON HAVE OR ANY OTHER JUDGE IN THIS DISTRICT  
9 HAVE CASES THAT SOMEHOW SHOULD BE RELATED TO THESE CASES?

10 **MR. SIMON:** I DON'T THINK SO, YOUR HONOR, BUT I'M HAPPY  
11 TO ASK. WE HAVE A REPRESENTATIVE HERE, IF YOU WOULD LIKE ME TO  
12 ASK.

13 **THE COURT:** WELL, YOU CAN IF YOU DON'T NEED TO DO  
14 SOMETHING ELSE.

15 MY NEXT QUESTION IS: CAN I HAVE THE ALJ'S OPINION IN THE  
16 ITC IN UNREDACTED VERSION? HOW LONG IS IT?

17 **MR. SIMON:** YES. WE HAVE IT HERE, YOUR HONOR.

18 **THE COURT:** ANYONE HAVE A PROBLEM WITH ME HAVING AN  
19 UNREDACTED VERSION OF IT? YOU WANT IT FILED UNDER SEAL OR  
20 SOMETHING, I SUPPOSE?

21 **MR. SIMON:** WE HAVE NO PROBLEM WITH IT, YOUR HONOR.

22 **MR. DEVITT:** YOUR HONOR, THERE ARE A NUMBER OF PARTIES.  
23 BILL DEVITT.

24 **THE COURT:** YOU CAN FILE IT UNDER SEAL. WOULD SOMEONE  
25 FILE IT UNDER SEAL?

1           **MR. DEVITT:** I AM JUST CONCERNED THERE ARE OTHER  
2 PARTIES WHO WERE PARTIES IN THAT CASE THAT THEY MAY  
3 CONFIDENTIAL --

4           **THE COURT:** SOMEBODY JUST FILE IT UNDER SEAL. FILE IT  
5 WITH A REQUEST FOR A SEALING ORDER, AND I'LL FILE IT UNDER SEAL.  
6 OKAY.

7           **MR. SIMON:** THE INITIAL DETERMINATION, YOUR HONOR, OR  
8 JUST THE CLAIM CONSTRUCTION ORDER OR BOTH?

9           **THE COURT:** HOW LONG IS IT?

10          **MR. SIMON:** THEY ARE BOTH PRETTY LONG.

11          **MR. DEVITT:** THERE'S THE INITIAL DETERMINATION FROM ALJ  
12 AND COMMISSION REPORT. WE'LL FILE THOSE BOTH UNDER SEAL FOR YOUR  
13 HONOR.

14          **THE COURT:** OKAY.

15          **MR. SIMON:** THEY ARE UNDER A HUNDRED PAGES FOR THE  
16 CLAIM CONSTRUCTION ORDER.

17          **THE COURT:** OKAY. JUST FILE THEM. WE HAVE A LOT OF  
18 ELECTRONIC MEDIA.

19          **MR. SIMON:** OKAY. WE WILL DO THAT. I'M SORRY.

20          **THE COURT:** ON YOUR CASE MANAGEMENT YOU MENTION THAT  
21 YOU HAVE BEEN MEDIATING AND THAT YOU WILL CONTINUE TO MEDIATE, SO  
22 I WOULD LIKE YOU TO DO THAT. SOME PEOPLE HAVE SETTLED. THOSE OF  
23 YOU WHO HAVEN'T SHOULD CONTINUE TALKING IF THERE'S ANY PROSPECT  
24 OF MORE OF YOU SETTLING.

25           YOU'VE GOT YOUR ARGUMENT ABOUT THE REPRESENTATIVE PRODUCTS

1 AND SOMEBODY THINKS YOU CAN'T DECIDE ON THAT UNTIL IT'S DECIDED  
2 WHETHER THE INFRINGEMENT CONTENTIONS ARE GOOD ENOUGH.

3 I WISH WE COULD GET THAT DONE A LITTLE BIT QUICKER, BUT I  
4 GUESS THAT'S GOING TO BE DONE ON JULY 16TH, SO I GUESS AFTER THAT  
5 YOU SHOULD DISCUSS WHETHER YOU CAN AGREE UPON REPRESENTATIVE  
6 PRODUCTS.

7 THIS ISSUE ABOUT THE DISCOVERY AND WHETHER YOU HAVE TO TURN  
8 OVER THINGS WITHIN YOUR CUSTODY AND POSSESSION AND CONTROL, ONE  
9 SIDE SAYS YOU HAVE TO DO THAT. AND IT SEEMS THAT YOU DO. BUT  
10 THE OTHER SIDE SAYS NO, WHAT THEY REALLY MEAN IS WE HAVE TO GIVE  
11 OVER THIRD-PARTY STUFF. AND THAT YOU DON'T HAVE TO DO.

12 SO IF YOU'VE GOT SOME LACK OF CLARITY ABOUT WHAT DOCUMENTS  
13 YOU HAVE TO TURN OVER WE'LL REFER THAT TO JUDGE RYU, AS WELL.

14 **MR. SIMON:** SHOULD WE JUST FILE SOMETHING IN ACCORDANCE  
15 WITH THE RULES IN ACCORDANCE WITH YOUR STANDING ORDER?

16 **THE COURT:** YES. FILE A JOINT LETTER BRIEF EXPLAINING  
17 WHAT YOUR DISCOVERY DISPUTE IS ABOUT WHAT DOCUMENTS HAVE TO BE  
18 TURNED OVER.

19 BUT FIRST TALK TO EACH OTHER. WHAT YOU SAID SOUNDS LIKE,  
20 YES, THEY DO HAVE TO TURN THAT OVER. WHAT THEY SAY IS WHAT  
21 YOU'RE REALLY ASKING FOR IS FOR THEM TO TURN OVER STUFF THAT THEY  
22 DON'T HAVE AND ONLY THIRD PARTIES HAVE.

23 SO YOU NEED TO RESOLVE IF IT'S THIRD-PARTIES, THEN, NO, THEY  
24 DON'T TO HAVE TURN IT OVER. YOU HAVE TO GET IT FROM THE THIRD  
25 PARTIES. IF IT'S STUFF WITHIN THEIR CARE, CUSTODY AND CONTROL.

1 THEN. YES. THEY HAVE TO TURN IT OVER.

2 THAT'S PRETTY STRAIGHTFORWARD. IF YOU'VE GOT A DISPUTE  
3 ABOUT THAT THEN YOU NEED TO EXPLAIN YOUR RESPECTIVE SIDES AND  
4 GIVE IT TO JUDGE RYU.

5 **MR. DEVITT:** BILL DEVITT ON BEHALF OF THE DEFENDANTS.  
6 WE AGREE WITH EXACTLY WHAT YOU SAID. SO OUR POSITION IS THAT --

7 **MR. SIMON:** WE'LL FILE IT, YOUR HONOR. WE'LL FILE IT.

8 **THE COURT:** ON THE OTHER HAND, YOU KNOW, IF YOU COULD  
9 GET THEM, IT'S EASIER TO SWITCH THAN FIGHT AND JUST GIVE IT TO  
10 THEM, FOR GOODNESS SAKE.

11 OKAY. WHAT ELSE? OH, WE WERE -- YOU HAVE PROPOSED  
12 SCHEDULES WHICH ARE ABOUT THREE MONTHS APART IN HOW THEY COME  
13 OUT.

14 SO I GUESS I CAN JUST PICK ONE AND INCLUDE IT WHEN I PUT OUT  
15 THE ORDER SINCE I DON'T REALLY HAVE TIME TO GO OVER IT RIGHT NOW.

16 **MR. SIMON:** YOUR HONOR, ONE POINT ON THAT IS THAT'S  
17 DEPENDENT IN PART ON THIS REPRESENTATIVE PRODUCTS AND THIS  
18 DISCOVERY. IF WE HAVE TO GO TO JAPAN OR CHINA AND TAKE  
19 DISCOVERY, AND WE'RE GOING TO HAVE TO DO IT FOR 5,000 PRODUCTS,  
20 BECAUSE THEY WON'T AGREE TO REPRESENTATIVE PRODUCTS IT'S GOING TO  
21 TAKE A LOT LONGER THAN THE PROPOSED SCHEDULE.

22 WE'RE ASSUMING WE CAN WORK THAT OUT.

23 **THE COURT:** OKAY. WELL, YOURS WAS SHORTER THAN THEIRS.

24 **MR. SIMON:** RIGHT. AND WE ARE ASSUMING IF WE CAN WORK  
25 IT OUT IT CAN BE REAL SHORT. AS YOU HEARD ALL THESE PRODUCTS

1 OPERATE THE SAME. IT'S SD MMC. WE KNOW HOW THEY WORK. SO WE  
2 ARE HOPEFUL WE CAN WORK IT OUT. I JUST WANT TO MAKE IT CLEAR.

3 ONE OTHER HOUSEKEEPING MATTER, YOUR HONOR, YOU HAD ASKED FOR  
4 AND I THINK WE GAVE YOU THIS BEFORE, BUT THE SUPPORT FOR THE MCMD  
5 LINES IS AN EXHIBIT O TO OUR BRIEF, PARAGRAPH 40. THAT'S OUR  
6 EXPERT'S DECLARATION. AND HE GOES THROUGH EVERY PAGE AND LINE  
7 NUMBER FOR MCMD.

8 **THE COURT:** OKAY.

9 OKAY. THANK YOU.

10 **MR. SIMON:** THANK YOU.

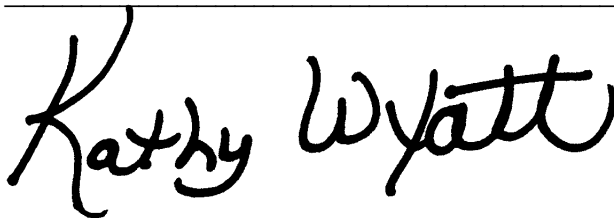
11 (THEREUPON, THIS HEARING WAS CONCLUDED.)

12 STENOGRAPHY CERTIFICATION

13 "I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT  
14 FROM THE RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED MATTER."

15 JULY 28, 2015

16 KATHERINE WYATT

17   
18  
19  
20  
21  
22  
23  
24  
25